VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, APPELLANT,

vs.

WASHINGTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MAY 3, 1963

PROBABLE JURISDICTION NOTED JUNE 17, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, APPELLANT,

vs.

WASHINGTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

VOLUME I

	Original	Print
Record from the Superior Court of the State of Washington in and for Thurston County		
Notice of appeal and complaint	5	1
Excerpt from answers to interrogatories	22	5
Stipulation	27	6
Stipulation of facts	34	12
Memorandum opinion, Wright, J.	44	21
Proposed findings of fact and conclusions of law submitted by defendants	47	23
Proposed judgment submitted by defendants	71	45
Findings of fact and conclusions of law	87	46
Judgment	109	65
Notice of appeal to Supreme Court of the State of Washington	112	67
Plaintiff's notice of cross appeal	121	68
Statement of facts, December 14, 15 and 16, 1959	126	70
Appearances	131	71
Deposition of Edwin A. Snyder read into record	133	72

RECORD PRESS, PRINTERS, NEW YORK, N. Y., OCTOBER 31, 1963

	Original	Print
Record from the Superior Court of the State of Washington in and for Thurston County—Continued		
Statement of facts, December 14, 15 and 16, 1959—Continued		
Deposition of Edward A. McCaffrey read into record	222	135
Deposition of Stanley C. Hobson read into record	239	147
Deposition of John H. Swanson read into record	258	161
Deposition of George A. Greig read into record	277	175
Deposition of William H. Ross read into record	289	184
Colloquy between Court and counsel	318	204
Testimony of A. E. Holmburg—direct	327	210
Colloquy between Court and counsel	329	212
Deposition of John Reeves read into record	339	218
Colloquy between Court and counsel	364	237
Defendants' interrogatories and answers	370	240
Both sides rest	374	243
Memorandum opinion, Wright, J. (Copy omitted in printing)	375	244
Certificate of Wright, J.	377	244
VOLUME II		
Plaintiff's Exhibit No. 1—Certain Pontiac job classifications	378	245
Plaintiff's Exhibit No. 2—Direct dealer selling agreement, Pontiac Motor Division	380a	249
Plaintiff's Exhibit No. 3—Portions of Pontiac office manual setting forth zone office procedures (excerpts)	403	273
Business management	404	273
Dealer selling agreements	409	278
Service and service promotion	429	304
Plaintiff's Exhibit No. 4—Certain Chevrolet job classifications	443	322

	Original	Print
Record from the Superior Court of the State of Washington in and for Thurston County—Continued		
Plaintiff's Exhibit No. 5—Portions of Chevrolet office manual setting forth zone office procedures (excerpts)	446	325
Dealer financial statements	446	325
Dealer capital standard program	449	329
Accumulation of awards or prizes	454	337
Car distribution standard practice	457	340
Defendant's Exhibit No. 8—Direct dealer selling agreement, Chevrolet Motor Division	459a	343
Defendant's Exhibit No. 10—Manual of service department policies and procedures effective June 1, 1950, Chevrolet Motor Division	482	367
Defendant's Exhibit No. 11—Letter from General Motors Corporation to State of Washington Tax Commission, dated June 30, 1958	507	392
Exhibits 3 and 4—Information re field representatives in State of Washington, for Oldsmobile and Pontiac divisions, 1953-1957	518	405
Exhibit 5—Dealer monthly projection report prepared by Pontiac dealers	520	407
Exhibit 6—Dealer's ten-day report on new cars submitted by Pontiac dealers	521	408
Exhibit 7—Monthly financial statement submitted by Pontiac dealers	525	412
Exhibit 8—Application for a Pontiac dealer selling agreement	529	416
Exhibit 9—Pamphlet entitled "Dealer Investment Plan"	533	420
Defendant's Exhibit No. 12—Realty occupied by Chevrolet Motor Division and General Motors Parts Division, in the State of Washington, 1949, 1950, 1951, 1952 and first half 1953	550	437
Defendant's Exhibit No. 13—Realty occupied by unrelated divisions and subsidiaries in the State of Washington, 1949, 1950, 1951, 1952 and first half 1953	551	438

	Original	Print
Proceedings in the Supreme Court of the State of Washington	552	439
Opinion, Finley, Ch. J.	552	439
Remittitur	570	455
Notice of appeal to the Supreme Court of the United States	571	456
Clerk's certificate (omitted in printing)	576	458
Order noting probable jurisdiction	577	459

[fol. 5] [File endorsement omitted]

IN THE

SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

vs.

STATE OF WASHINGTON, and E. C. HUNTLEY, DINSMORE TAYLOR, H. DAN BRACKEN, JR., as the TAX COMMISSIONERS OF THE STATE OF WASHINGTON, Defendants.

NOTICE OF APPEAL AND COMPLAINT—Filed June 25, 1954

Comes Now plaintiff and appeals from the order of the Tax Commission of the State of Washington and alleges as follows:

I.

That it is a corporation organized and existing under the laws of the State of Delaware, qualified to do business in the State of Washington, and having paid all license fees last due said state.

II.

That at all times hereinafter mentioned the defendant State of Washington was and now is a sovereign state and one of the states of the United States of America. That at all times herein mentioned the defendants E. C. Huntley, Dinsmore Taylor and H. Dan Bracken, Jr., were and now are the duly appointed, qualified and acting commissioners of the Tax Commission of the State of Washington and as such constitute the Tax Commission of the State of Washington.

III.

That Chevrolet Division, Pontiac Division and Oldsmobile Division are divisions of the plaintiff corporation but not separately incorporated.

[fol. 6]

IV.

That plaintiff corporation owns and operates factories for the manufacture of automobiles, trucks and other merchandise. That sales are made by plaintiff of automobiles and trucks to dealers in this State pursuant to order therefor by said dealers. That said cars are manufactured and assembled outside of the State of Washington and shipped into this State.

V.

That the Tax Commission of the State of Washington imposed taxes upon plaintiff (The Chevrolet-Oakland Division) in the sum of $241,237.08, which assessment was duly protested by plaintiff.

VI.

A hearing was had on plaintiff's protest before the Tax Commission on March 17, 1954, at Olympia, Washington. Thereafter the Tax Commission issued its order, Registration No. C 406-938, dated May 27, 1954, in which plaintiff's protest was denied.

VII.

That thereafter said amount, including interest, was paid to the Tax Commission of the State of Washington in the sum of $249,278.71. That plaintiff has also paid the Tax Commission of the State of Washington the sum of $71,207.35 because of interstate sales through its Chevrolet Division. That plaintiff has kept and preserved all books, records and invoices as required by R.C.W. Chapter 82.32.

VIII.

Plaintiff protests said tax on the ground that the tax is computed on interstate sales. That the imposition of this

tax, the same being the Business and Occupation Tax and [fol. 7] Retail Sales Tax of the State of Washington, constitutes a burden upon interstate commerce in violation of the Commerce Laws of the Constitution of the United States (Article I of the Constitution of the United States, Section 8, Clause 3) and by virtue thereof the imposition of the Business and Occupation Tax upon the gross proceeds of the sales hereinbefore referred to wherein goods are shipped in interstate commerce from points without the State of Washington to points within the State of Washington is deductible under the State of Washington Revenue Act.

IX.

That on May 27, 1954, the State Tax Commission under registration No. C 404-797 denied the claim of this plaintiff for refund of the sum of $16,844.75 theretofore paid by plaintiff as Business Occupation Tax on interstate sales of automobiles by the Oldsmobile Division of plaintiff to the automobile dealers in the State of Washington assessed in violation of the Interstate Commerce Clause of the United States Constitution as aforesaid.

X.

That on May 27, 1954, the State Tax Commission under registration No. C 404-1345 denied the claim of the plaintiff for refund in the sum of $15,876.80 theretofore paid by the plaintiff as Business and Occupation Tax on interstate sales of automobiles by the Pontiac Motor Division of this plaintiff to the automobile dealers in the State of Washington assessed in violation of the Interstate Commerce Clause of the United States Constitution as aforesaid.

XI.

That the defendant State of Washington and the Washington State Tax Commission and each of them should be restrained and enjoined from asserting any tax liability on interstate commerce sales of the plaintiff corporation from [fol. 8] points without the State of Washington to points

within the State of Washington and the laws of the State of Washington and the rules and regulations of the Tax Commission of the State of Washington to the extent that the same violates the Commerce Clause of the United States Constitution should be held to be unconstitutional and void.

XII.

Plaintiff reserves the right to amend this complaint and notice.

Wherefore plaintiff appeals to the above-entitled court from the entry of said orders of May 27, 1954, and prays that it may recover judgment against the defendants for all taxes as listed in the body of this complaint, together with interest thereon from date of payment, and that the Tax Commission of the State of Washington be restrained and enjoined from collecting from the plaintiff or attempting to collect from the plaintiff any further taxes on interstate sales; that plaintiff have such other and further relief as the court may deem just and equitable in the premises, together with its costs and disbursements herein to be taxed.

Eggerman, Rosling & Williams, Attorneys for Plaintiff.

Office and Post Office Address: 918 Joseph Vance Building, Seattle 1, Washington.

Duly sworn to by Henry Kastner, jurat omitted in printing.

[fol. 22] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

[Title omitted]

EXCERPT FROM ANSWERS TO INTERROGATORIES—
Filed December 16, 1959

* * * * * * * *

Inter. 2. If Employment Security contributions were paid to the Department of Employment Security of the State of Washington during the audit period in question, indicate the average number of employes employed by plaintiff (include all divisions) included in reports to the Department of Employment Security of the State of Washington for each year of the audit period in question.

[fol. 23] Answer 2.

Years	Chevrolet Division	GM Parts Division	Oldsmobile Division	Pontiac Division
1949	16	20	3	2
1950	11	28	2	3
1951	17	24	1	3
1952	17	19	2	3
First Half 1953	16	21	6	3

Other divisions and subsidiaries of General Motors Corporation reported additional employes in unrelated activities in the State of Washington during the audit period.

* * * * * * * *

[fol. 27] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

[Title omitted]

STIPULATION—Filed December 14, 1959

Come now the parties by their respective counsel and stipulate and agree as follows:

I

William S. Schumacher and Clark Squire, as the Tax Commissioners of the State of Washington, may be substituted as parties defendant for E. C. Huntley, Dinsmore Taylor, and H. Dan Bracken, Jr., as the Tax Commissioners of the State of Washington.

II

Allegation numbers I, III, IV, V and VI of the Notice of Appeal and Complaint are true. In addition to the sales of automobiles and trucks referred to in Allegation number IV, Plaintiff made such sales of parts and accessories manufactured outside of the State of Washington.

III

Allegation number II of the Notice of Appeal and Complaint is true, except that since the date thereof, E. C. Huntley, Dinsmore Taylor and H. Dan Bracken, Jr., have been succeeded as the Tax Commissioners of the State of Washington by William S. Schumacher and Clark Squire who are now the duly appointed, qualified and active Commissioners of the State of Washington and as such constitute the Tax Commission of the State of Washington.

[fol. 28] IV

Pursuant to assessment made against its Chevrolet Motor Division, which assessment was duly protested and was sustained in administrative proceedings, Plaintiff paid taxes of

$229,760.38 and interest thereon of $19,518.33. Copies of Orders of defendant Tax Commission are attached hereto marked Exhibits A and B.

V

Defendants have heretofore refunded to Plaintiff $37,219.43 of the aforesaid tax payment and $4,639.62 of the aforesaid interest payment, and Plaintiff's prayer for damages is reduced by those amounts.

VI

Of the aforesaid payments, $7,016.77 tax and $1,054.56 interest are conceded by Plaintiff to have been due and Plaintiff's prayer for damages is reduced by those amounts accordingly.

VII

Of the aforesaid tax payment, $156,594.75 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet automobiles and trucks to dealers in counties other than Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, of which amount $963.22 represents tax measured by sums equal to "dealer bonus."

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $156,594.75, plus interest paid thereon of $11,658.35, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

If the proceeds of such wholesale sales are properly so includable but dealer bonus is not, Plaintiff is entitled to judgment for $963.22, plus interest paid thereon of $73.28, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

[fol. 29] Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

VIII

Of the aforesaid tax payment, $13,976.33 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet automobiles and trucks to dealers in the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, of which amount $66.96 represents tax measured by sums equal to "dealer bonus".

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $13,976.33, plus interest paid thereon of $1,049.24, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

If the proceeds of such wholesale sales are properly so includable but dealer bonus is not, Plaintiff is entitled to judgment for $66.96, plus interest paid thereon of $5.12, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

IX

Of the aforesaid tax payment, $14,699.68 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet parts and accessories, of which amount $83.12 represents tax measured by sums equal to "parts returns".

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $14,699.68, plus interest paid thereon of $1,069.98, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

[fol. 30] If the proceeds of such wholesale sales are properly so includable but parts returns should be deducted therefrom, Plaintiff is entitled to judgment for $83.12, plus interest paid thereon of $5.29, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

X

Of the aforesaid tax payment, $253.42 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet parts and accessories which were returned to Plaintiff by the purchasers.

If such returns are properly deductible from taxable wholesale sales, Plaintiff is entitled to judgment for $253.42, plus interest paid thereon of $46.58, plus interest on the total thereof from June 25, 1954 to the date of payment of such judgment.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

XI

Plaintiff petitioned for refund in due form and time of $71,207.35 Business and Occupation Tax theretofore paid by its Chevrolet Motor Division in addition to the payment pursuant to assessment as aforesaid. Defendants concede that such amounts have been paid and such refund claim timely made, but have rejected Plaintiff's contentions on the grounds set forth in Defendant Tax Commission's memorandum attached hereto marked Exhibit C. In view of this stipulation the ground that said claim was not timely filed shall be disregarded on the trial of this case.

XII

Of the payments described in Paragraph XI hereof, $65,368.35 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet automobiles, trucks, parts and accessories to [fol. 31] dealers in counties other than Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla.

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $65,-

368.35, plus interest to the date of payment of such judgment on the several portions thereof as follows: on $8,537.10 from September 15, 1950; on $14,693.92 from November 15, 1950; on $13,418.68 from January 15, 1951; on $11,690.41 from March 15, 1951; on $11,687.02 from May 15, 1951; and on $5,341.22 from July 15, 1951.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

XIII

Of the payments described in Paragraph XI hereof, $5,839.00 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Chevrolet automobiles, trucks, parts and accessories to dealers in the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla.

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $5,839.00, plus interest to the date of payment of such judgment on the several portions thereof as follows: on $762.57 from September 15, 1950; on $1,312.53 from November 15, 1950; on $1,198.62 from January 15, 1951; on $1,044.24 from March 15, 1951; on $1,043.94 from May 15, 1951; and on $477.10 from July 15, 1951.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

XIV

In due form and time, Plaintiff claimed refund of $16,844.75 Business and Occupation Tax theretofore paid by its Oldsmobile Division, which claim was denied by the Tax [fol. 32] Commission in its Order No. C404-797 dated May 27, 1954, attached hereto marked Exhibit D.

XV

Of the payments described in Paragraph XIV hereof, $16,844.75 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Oldsmobile automobiles, parts and accessories.

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $16,844.75, plus interest to the date of payment of such judgment on the several portions thereof as follows: on $2,560.64 from September 15, 1950; on $3,061.47, from November 22, 1950; on $5,416.39 from January 20, 1951; on $2,433.93 from March 22, 1961; and on $3,372.32 from May 17, 1951.

Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

XVI

In due form and time, Plaintiff claimed refund of $15,876.80 Business and Occupation Tax theretofore paid by its Pontiac Motor Division, which claim was denied by the Tax Commission in its Order No. C404-1345 dated May 27, 1954, attached hereto marked Exhibit E.

XVII

Of the payments described in Paragraph XVI hereof, $15,876.80 was assessed and paid as Business and Occupation Tax (including Surtax) with respect to wholesale sales of Pontiac automobiles, parts and accessories.

If the proceeds of such wholesale sales are not properly includable in the base for assessment of Business and Occupation Tax, Plaintiff is entitled to judgment for $15,876.80, plus interest to the date of payment of such judgment on the several portions thereof as follows: on $3,969.20 from November 20, 1950; on $3,969.20 from January 20, 1951; on $3,969.20 from March 20, 1951; and on $3,969.20 from May 20, 1951.

[fol. 33] Otherwise, Plaintiff is entitled to no recovery with respect to the transactions described in this paragraph.

XVIII

As to each and every item described in Paragraphs VII, VIII, IX, X, XII, XIII, XV, and XVII hereof, Plaintiff claims that the Statutes of the State of Washington do not purport to impose Business and Occupation Tax measured by such transactions, and specifically that the said Statutes

do not purport to measure such tax by the proceeds of interstate sales into the State, nor by amounts equal to "dealer bonus", nor by amounts equal to "parts returns".

As to each and every item described in Paragraphs VII, VIII, IX, XII, XIII, XV and XVII hereof, Plaintiff claims that the State of Washington has no jurisdiction to impose a Business and Occupation Tax measured by such transactions and that if any Statute of the State of Washington did purport to impose such tax it would be invalid under the Constitution of the State of Washington because of depriving Plaintiff of its property without due process of law and invalid under the Constitution of the United States because of depriving Plaintiff of its property without due process of law and because of constituting a prohibited burden on interstate commerce.

XIX

Either party may introduce further evidence.

Rosling, Williams, Lanza & Kastner, By DeWitt Williams, Attorneys for Plaintiff.

John J. O'Connell, Attorney General for the State of Washington, By John W. Riley, Deputy Attorney General, Attorney for Defendants.

Dated: December 8, 1959.

[fol. 34] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

[Title omitted]

STIPULATION OF FACTS—Filed December 14, 1959

Comes Now General Motors Corporation, the plaintiff above named, and the defendants, by and through their respective counsel of record, and hereby submit the following Stipulation. It is agreed that this Stipulation may be

supplemented by the parties at the time of trial with additional evidence.

Plaintiff seeks to recover certain taxes paid to the State of Washington, as specified in a separate stipulation dated December 8, 1959, and an injunction against similar assessments in the future. Said stipulation sets forth the amount of tax attributable to each of several groups of transactions. It is this Stipulation's purpose to outline a description of each such group of transactions. The term "audit period" refers to the period January 1, 1949 through June 30, 1953. All taxes sought to be recovered herein were paid with respect to transactions occurring within that period.

Statements herein are, for convenience, generally in the present tense. Unless otherwise stated, they are true also for all periods pertinent to this action. For the convenience of the Court, Exhibits 1 through 6 referred to herein, because of their bulk, are not physically attached hereto, but incorporated by reference.

[fol. 35] I

Plaintiff is a Delaware corporation qualified to do business in Washington. Its business includes the manufacture for sale of automobiles, trucks, parts and accessories therefor. It conducts no manufacturing operations in Washington.

Plaintiff conducts much of its business through Divisions, not separately incorporated, which operate substantially independently of each other. Plaintiff has a corporate subsidiary, General Motors Acceptance Corporation, which is engaged in the business of financing the sale of General Motors products, and which, through another corporate subsidiary of its own, Motors Insurance Corporation, insures them against physical damage.

The transactions of only the Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions are included in the tax base involved in this action.

II

(1) Plaintiff makes sales from stocks of goods located in Washington, and pays Business and Occupation tax to the

State, measured by the proceeds thereof. The taxability of such transactions is not in dispute.

(2) Since January 1, 1954, Plaintiff has made and continues to make a substantial volume of sales, pursuant to orders processed through a "Zone Office" in Washington, completed by shipment of merchandise from factories (sometimes, warehouses) located outside Washington, and including factories at Oakland and Southgate, California, St. Louis, Missouri, and Lansing and Pontiac, Michigan, and a warehouse at Portland, Oregon and pays Business and Occupation tax to the State. The taxability of such transactions is not in dispute. The function of a "Zone Office" is hereinafter described.

(3) Plaintiff makes a substantial volume of sales pur- [fol. 36] suant to orders processed through Zone offices in Portland, Oregon, completed by shipment of merchandise from factories (sometimes, warehouses) located outside Washington, including factories at Oakland and Southgate, California, St. Louis, Missouri, and Lansing and Pontiac, Michigan, and a warehouse at Portland, Oregon. Plaintiff does not include such transactions in the measure of the Business and Occupation tax paid to the State, and has made no payments based upon such a measure except those which are the subject of this action.

III

The field organizations of the Chevrolet, Pontiac and Oldsmobile Divisions are similar in all material respects. The differences between the Chevrolet organization and the others, and the operation of General Motors Parts Division, are hereinafter described, following the description of the Pontiac organization, from which Oldsmobile does not differ significantly, and in depositions of Edwin A. Snyder, Edward A. McCaffrey, Stanley C. Hobson, George A. Greig, William S. Ross, John Reeves and John H. Swanson, whose depositions were taken on October 6 and 8, 1959, and November 4, 1959, which may be published as evidence in this action pursuant to the terms of the stipulation of counsel set forth in said depositions.

IV

Pontiac's "Zone Office", which has cognizance of the State of Washington, is located in Portland, Oregon. The geographical territory of the "Portland Zone" includes Washington, Oregon, Alaska and parts of Idaho and Montana.

The Zone Office organization comprises about 20 people, including a "Zone Manager," and "Assistant Zone Manager," a "Business Management Manager," a "Parts and Service Manager," and "Office Manager—Car Distributor," clerical assistants, five "District Managers," and a smaller [fol. 37] number of "Service Representatives." Descriptions of the duties of such of said personnel as are contained in the job classification manual applicable to Pontiac are set forth in Exhibit 1. Pontiac does not rent or own any space in Washington, and has no telephone listing and no bank account in Washington.

V

Pontiac automobiles are sold at wholesale by Pontiac Division to retail "dealers." Dealers are individual proprietorships, partnerships or corporations, which have no corporate relationship to Plaintiff, except that another division of Plaintiff', Motors Holding Division, in infrequent instances provides temporarily a portion of the substantial capital required to get a dealer started.

The relationship between Pontiac and its dealers is defined in a "Dealer Selling Agreement" which is in all material respects uniform for all dealers. Exhibit 2 is a copy of a typical agreement. The dealer operates a retail store for the sale of Pontiac automobiles, supported by the sale of parts and accessories, the repair and servicing of his customers' cars, and the marketing of used cars taken in trade. While most dealers confine their efforts to a single line of automobiles, there are instances, especially in the smaller towns, of dealers who handle two or even three lines. The additional lines may or may not be General Motors Products. A few engage in extensive used-car operations.

The dealer's facilities—land, building, etc.—are owned by him or leased from others. His tools, supplies, signs,

etc., and his inventories of parts, accessories, and new and used automobiles are owned entirely by him, subject, in the case of new automobiles, to financing arrangements which most dealers have with banks or finance companies, fre-
[fol. 38] quently including General Motors Acceptance Corporation, a subsidiary of Plaintiff.

VI

Retail demand for Pontiac automobiles is stimulated in part by a combination of the national advertising done entirely by Plaintiff from its home office and the local efforts of the dealers. During the audit periods, some advertising was paid for out of a "co-operative advertising fund" to which both Plaintiff and dealers contributed, but that arrangement has been discontinued and all advertising is paid for entirely by one party or the other.

The function of the Pontiac field organization in general, and the Zone Office in particular, is to establish and maintain effective dealer representation. Zone Office procedures are described in a Manual, portions of which are Exhibit 3.

VII

The Zone Office has responsibility for carrying out the objective of having the right number of strong dealers in appropriate locations. In consultation with, and subject to the approval of, superior authority, this includes determining the number of outlets desirable for each territory, the selection of new dealers to fill "open points," and assistance to existing dealers.

The Zone Manager is personally responsible for recommending to his superiors applicants for dealerships. When he has approval, he signs the Dealer Selling Agreements with such persons. Once they are in business, his organization helps and encourages them as hereinafter outlined.

Every month, each dealer submits a financial statement on a form provided by Pontiac. The Zone Business Management Manager compares the results shown thereon with the average for the Zone and for the entire country. Weaknesses appearing from that comparison are pointed out to the individual dealers.

The Zone Parts and Service Manager, assisted by the Ser-
[fol. 39] vice Representatives, advises dealers on maintenance of adequate stocks of service parts and assists them with service problems, such as recommending service procedures for new models, and assisting in instructing dealer service personnel, and carries out Plaintiff's warranty obligations to dealers. One Service Representative divides his time about equally between dealers in Washington and dealers outside Washington.

The Zone Car Distributor receives and processes orders for automobiles, follows up on orders with the factory, assists dealers in locating from other dealers specific models required to fill rush orders, and, during periods of short supply, allocates the available supply among dealers.

The Assistant Zone Manager's primary function is the supervision of the District Managers.

VIII

Each District Manager has an assigned territory within the Zone, and lives in that territory. Pontiac has one "District" and parts of two others in Washington. The District Manager has no secretary or other assistant and no business listing, but has a residence phone used for business purposes. His reports to the Zone Office are made in person at the Zone Office or by mail. The District Manager's function includes serving as the Zone Manager's direct contact with the dealer at his place of business, receiving from him his complaints, observing his operations, reporting thereon to the Zone Office, and passing on to him such advice and counsel as the Zone Office can make available to strengthen his operation and make it profitable. He calls on each dealer in his District periodically. The frequency and duration of such calls depend upon the size of the dealership and the number and character of problems. Once a month he obtains from the dealer a projection of the dealer's requirements for automobiles for the next three
[fol. 40] months. He assists the dealer in making these estimates.

Actual orders are thereafter sent by the dealer to the Zone Office, usually by mail, sometimes by telephone, and

infrequently handed to the District Manager, who then mails or delivers them to the Zone Office.

The orders are accepted (or rejected) at the Zone Office or at the factory, and if accepted are filled by shipment from the factory by common carrier, f.o.b. the factory. If the dealer has so arranged in advance with a finance company, shipments are made on straight bill of lading upon receipt of payment or acceptable credit from the finance company, which takes security title. Other shipments are made on bill of lading with sight draft attached.

IX

Chevrolet's operation with respect to the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla is substantially similar to the Pontiac operations described above, except that there are more dealers in the Zone and the Zone Office is larger.

Chevrolet's operation with respect to the balance of the State is substantially similar, except that through December 31, 1953, Chevrolet maintained an office in Seattle. This office was supervised by the Portland Zone Manager. On January 1, 1954, all of Washington other than the aforesaid counties was assigned to a new Zone established in Seattle. Orders processed through the new "Seattle Zone Office" established January 1, 1954, are included in the measure on which Plaintiff pays tax and such tax is not here in dispute.

Exhibit 4 contains job descriptions from Chevrolet's job classification manual of field representatives who operate in the State of Washington. Exhibit 5 consists of portions of Chevrolet Zone Office manual setting forth the procedures of the Chevrolet field organization.

[fol. 41] X

General Motors Parts Division has the function of warehousing and shipping parts and accessories for Chevrolet cars and trucks, and for Pontiac, Oldsmobile and Buick automobiles. It has a warehouse at Portland, Oregon, and during most of the audit period it had also a warehouse at Seattle. The warehouse at Seattle carried the "heavy vol-

ume" items. Less frequently called for items were ordered from the warehouse in Portland. Each dealer was furnished with two "order pads". On one, he ordered from the Seattle warehouse the items stocked there. On the other, he ordered direct from Portland the items not carried in Seattle. Business and Occupation tax was paid to the State on all shipments from the Seattle warehouse. No tax was or is paid on shipments from the Portland warehouse except the taxes which are the subject of this action.

XI

The "parts returns" which are the subject of Paragraphs IX and X of the Stipulation dated December 8, 1959, are effected pursuant to Paragraph 10 of the Dealer Selling Agreement, a sample of which is Exhibit 2, and to Paragraph 5 of the Dealer Price List, a sample of which is Exhibit 6. Pertinent portions of the Dealer Selling Agreement are:

> "10.D. After receiving specific authorization from the Seller, Dealer may return defective Chevrolet parts and accessories to Seller for Credit, at Dealer's net prices in effect at date such parts and accessories are received by Seller. • • •
>
> "F. Dealer may return any new Chevrolet parts and accessories purchased hereunder, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer. • • • Credit on new Chevrolet parts and accessories will be at Dealer's net prices. • • • "

Pertinent portions of the Dealer Price List are:

> "5.A. During the months of August, September or Oc-
> [fol. 42] tober of each year, • • • Dealer may return to Chevrolet one shipment of new, unused and undamaged Chevrolet (C & CX) parts purchased from Chevrolet, or purchased from an outgoing Chevrolet dealer as part of Dealer's initial Chevrolet parts stock, for a maximum credit value not to exceed four per cent (4%) of Dealer's net purchases of such parts, exclud-

ing batteries and electrolyte, during the previous fiscal year beginning July 1 and ending June 30.

"B. The return of such parts shall be subject to the following conditions:

"(1) Only those Chevrolet (C & CX) parts will be eligible for return hereunder which were listed for service in any of the Chevrolet Dealers Parts and Accessories Price Schedules which were in effect during the current and two preceding fiscal years. Chevrolet will credit Dealer's account for such eligible return parts with the Dealer Net Prices therefor in effect at the time such parts are received by Chevrolet. * * *"

XII

The "dealer bonus" which is the subject of Paragraphs VII and VIII of the Stipulation dated December 8, 1959, is defined in the Dealer Price List, a sample of which is Exhibit 6. Said Price List sets out the prices which will be invoiced to dealers when cars are shipped, and further sets out a provision denominated "Cash Bonus", pertinent portions of which are:

"In addition to the discount specified herein, Dealer will be paid on each new Chevrolet motor vehicle or chassis purchased directly from Chevrolet a cash bonus according to the selling area in which such Dealer is located as set forth in the following schedule * * * :

"1. To all Dealers located in cities or towns where Chevrolet has only one dealer—$7.50 per unit.

"2. To all Dealers located in cities or towns where Chevrolet has two or more dealers—$12.50 per unit.

"3. To all dealers in the following Metropolitan Areas * * * $17.50 per unit.

"This cash bonus, after deduction therefrom of any sums owing to Chevrolet, shall be paid or credited to Dealer within a reasonable time after the close of the applicable calendar year. * * *"

[fol. 43] XIII

Plaintiff has further agreed to and will produce at the time of trial the documents mentioned in Defendants' Motion for Production of Documents dated October 23, 1959, as modified by letter of the undersigned counsel for Defendants dated November 20, 1959, being those documents which are listed in said letter and which were heretofore exhibited by Plaintiff to counsel for the Defendants.

Dated this 14 day of December, 1959.

Rosling, Williams, Lanza & Kastner, By DeWitt Williams, Attorneys for Plaintiff.

John J. O'Connell, Attorney General, John W. Riley, Deputy Attorney General, Attorneys for Defendants.

[fol. 44] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

vs.

THE STATE OF WASHINGTON et al., Defendants.

MEMORANDUM OPINION—December 1, 1960

The major question is the taxability of automobiles and other merchandise sold in response to orders placed with offices outside of the state and shipped to the buyer from outside of the state. On the authority of B. F. Goodrich vs. State, 38 Wn. (2d) 224, and Norton vs. Dept of Revenue, 340 U. S. 534, the sales in question are not taxable *except* that those sales made by the Chevrolet Division within the

area served by the Seattle branch Zone office and while said office was open are taxable. The Seattle branch was maintained to assist purchasers (dealers) within the area served by the office to get better service on orders and in particular to get faster delivery. Such a service has a direct connection with the making of sales.

The so-called "Dealer Bonus" is in fact a deduction from the total purchase price. The dealer had an absolute right to the specified sum by his contract. It appeared that while automobiles were sold only for cash that certain parts and accessories were sold to dealers on credit and that at least one purpose of the "bonus" arrangement was to create a fund for the protection of plaintiff on those credit sales. It is a well established principle that the true nature of a transaction controls and not the name a thing is called. The amount of the "bonus" is not a part of the sales price and is not taxable.

The parts return question has three parts, the return of defective parts is clearly not taxable, the return within thirty (30) days is not taxable, the only problem is with the return of parts in one annual shipment. This annual return of parts is in fact a repurchase by plaintiff and such is not to be deducted from the taxable amount.

Judgment may be presented accordingly.

Dated this the 1st day of December, 1960 A.D.

Charles T. Wright, Judge.

[fol. 47] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

[Title omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANTS—Filed January 9, 1961

This matter came on regularly for trial before the undersigned Judge of the above-entitled court on December 14, 1959, and continued through December 16, 1959. Thereafter counsel submitted various memoranda of authority preliminary to final oral argument of the points of law involved which were argued to the court on October 25, 1960.

Parties having submitted Stipulations of Facts and Figures, the court having considered the various exhibits appended thereto and adduced during the trial of this cause; having considered the testimony of all the witnesses; and having rendered its Memorandum Opinion on the 1st day of December, 1960, hereby makes the following:

Findings of Fact:

I

At all times herein mentioned the plaintiff was, and now is, a Delaware corporation qualified to do business in the State of Washington.

II

At all times during the audit periods here in question the plaintiff was engaged in business within the State of Washington.

[fol. 48] III

Plaintiff's business activities at all times herein included the sale of automobiles, trucks, parts and accessories to retail dealers of plaintiff's manufactured products.

Italicized words and letters of the alphabet appearing in the Proposed Findings and Conclusions of Law are handwritten insertions.

IV

Plaintiff conducts its business activities through divisions which operate substantially independently of each other. This proceeding involves plaintiff's business activities ~~in the State of Washington~~ conducted by its Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions.

V

During the audit periods herein, plaintiff's business activities included ~~the solicitation, development, maintenance and promotion of independently owned retail establishments~~ dealing in the manufactured products of the plaintiff's Chevrolet, Pontiac, and Oldsmobile Divisions. Such retail establishments to which plaintiff sold its manufactured products were ~~organized~~ *generally located* on a geographical basis by each of plaintiff's Chevrolet, Oldsmobile and Pontiac Divisions. ~~and are collectively known as, and are referred to hereinafter as,~~ "~~plaintiff's dealer organization~~".

VI

The taxes in question were measured by the gross proceeds of plaintiff's sales of automobiles, trucks, parts and accessories to ~~the members of~~ plaintiff's retail dealers ~~organization~~ within the State of Washington.

The gross receipts from sales of manufactured products by plaintiff to plaintiff's retail dealers ~~organization~~ in the State of Washington which are included in the assessment bases here in question are not in question. Plaintiff's [fol. 49] gross receipts from sales to its dealer organization in the State of Washington and the computation of the tax assessments and interest which are in dispute in these proceedings have been fixed by pre-trial stipulation of the parties filed as an exhibit in these proceedings.

VII

During the audit periods here involved, the rate of tax prescribed by the laws of the State of Washington for the privilege of engaging in business (wholesaling) was three-

tenths of one per cent (.003) measured by taxpayer's gross receipts from its taxable business activities. ~~The~~ resulting business and occupation tax (wholesaling) and interest which is disputed by plaintiff and which is involved in these *covered by stipulation.*
proceedings is ~~$303,277.23~~. Plaintiff has paid other taxes which are not here in question for the audit period here involved.

VIII

All the products sold by plaintiff to its retail dealers in the State of Washington, the gross proceeds of which are included in the assessment base here in question, were manufactured by plaintiff at points outside the State of Washington.

IX

claimed
Plaintiff has ~~argued for~~ exclusion of the gross receipts from sales by it to its Washington dealers by its Chevrolet, Oldsmobile, Pontiac and General Motors Parts Divisions for a variety of reasons which makes convenient the following classification of factual patterns:

sales made
1. The first question concerns ~~business activities con-~~
by during the
~~ducted through~~ plaintiff's Chevrolet Division ~~in the State~~
audit periods here in question to dealers
~~of Washington for the audit periods here in question in~~ the counties in Washington other than the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla which resulted ~~during th~~
[fol. 50] in sales of Chevrolet trucks and automobiles, the gross proceeds of which are included in the assessment base here in question. For convenience, these transactions are hereinafter referred to as "Chevrolet Class A transactions". The amount of taxes plus interest involved was settled by stipulation of the parties to be in the amount of $233,581.45, which amount was paid by the plaintiff

which thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund in this court within the time allowed by law therefor.

2. The second factual pattern involves the plaintiff's business activities with respect to its Chevrolet Division *with dealers* conducted for the audit periods here in question in the nine southern counties of the State of Washington identified as Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, which resulted in sales of Chevrolet trucks and automobiles, the gross proceeds of which are included in the assessment base here in question. For convenience, these transactions are hereinafter referred to as "Chevrolet Class B transactions". The amount of tax involved was settled by stipulation of the parties to be in the amount of $13,976.33 plus $1,049.24 interest paid June 25, 1954, $762.57 paid on September 15, 1950, $1,312.53 paid on November 15, 1950, $1,198.62 paid on January 15, 1951; $1,044.24 paid on March 15, 1951; $1,043.94 paid May 15, 1951, and $477.10 paid on July 15, 1951. Plaintiff timely petitioned the Washington Tax Commission for refund of the foregoing amounts, which petitions for refund were denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund in this court within the time allowed by law therefor.

[fol. 51] 3. Plaintiff paid business and occupation taxes in the amount of $14,699.68 plus interest of $1,069.98 on June 25, 1954, computed at the rate of one-third of one per cent (.003%) of the gross proceeds from wholesale sales of Chevrolet parts and accessories to ~~plaintiff's~~ Chevrolet dealers ~~organization~~ in the State of Washington during the audit period here in question. During the audit periods here in question, parts sold to ~~plaintiff's~~ retail dealers ~~organization~~, the gross proceeds of which are included in the assessment bases in question here (including the foregoing sales to plaintiff's Chevrolet dealers), were

shipped to plaintiff's Chevrolet, Pontiac and Oldsmobile dealers on order by General Motors Parts Division from warehouses ~~in Seattle, Washington, and~~ *in* Portland, Oregon, the operations of which are further described in later Findings of Fact.

4. Plaintiff conducted business activities ~~in the State of Washington~~ by its Oldsmobile Division which resulted in wholesale sales of Oldsmobile cars, parts and accessories, the gross proceeds of which are included in the assessment base for the audit periods here in question. For convenience, these transactions are hereinafter referred to as "Oldsmobile transactions". The amount of tax involved was settled by stipulation of the parties to be in the amount of $16,844.75, $2,560.64 was paid on September 15, 1960; $3,061.47 on November 22, 1950; $5,416.39 on January 20, 1951; $2,433.93 on March 22, 1951; and $3,372.32 on May 17, 1951, after which the plaintiff timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

5. Plaintiff conducted business activities by its Pontiac Division ~~in the State of Washington~~ for the audit period [fol. 52] here in question resulting in sales to ~~its~~ Washington Pontiac dealers of cars, parts and accessories, the gross proceeds of which are included in the assessment base. For convenience, these transactions are hereinafter referred to as "Pontiac transactions". The amount of tax involved was settled by stipulation of the parties to be in the amount of $15,876.80; $3,969.20 of which was paid on November 20, 1950; $3,969.20 on January 20, 1951; $3,969.20 on March 20, 1951; and $3,969.20 on May 20, 1951. The plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

6. Plaintiff contends that dealer bonuses paid by the plaintiff ~~to the members of its~~ retail dealers ~~organization~~,

at the end of each fiscal year are a proper deduction from the total purchase price and are, therefore, properly excludable from the tax base here in question. For convenience, these transactions are hereinafter referred to as the "dealer bonus question". The amount of tax involved here which is measured by dealer bonuses paid by plaintiff to ~~its~~ Chevrolet dealers ~~organization~~ with respect to Chevrolet Class A transactions was settled by stipulation of the parties to be in the amount of $963.22 and $73.28 interest, which amount was paid by the plaintiff on June 25, 1954. Plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

7. Plaintiff contends that parts returned to the plaintiff by ~~the members of its~~ dealers ~~organization~~ within the State of Washington at the end of each year, pursuant to con- [fol. 53] tractual agreement therefor, are not a re-purchase by the plaintiff but are properly deductible from the gross sales by the plaintiff to the members of its retail dealer organizations within the State of Washington and, therefore, properly excludable from the tax base here in question. For convenience, this question is hereinafter referred to as "parts-return question". The amount of tax and interest involved was settled by stipulation of the parties to be in the amount of $388.41 with respect to the sale of Chevrolet parts and accessories to ~~plaintiff's~~ retail dealers in Washington, which amount was paid by the plaintiff on June 25, 1954. Plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

X

In order to provide for the distribution and sale of the manufactured products of Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions, plaintiff at all times

herein maintained organizations of employees serving its Chevrolet, Pontiac and Oldsmobile Divisions on a national, regional, zone and district level.

XI

At all times during the audit periods involved in these proceedings, the State of Washington was included within the western region of the plaintiff's national organization which covered the eleven western states. Such regions are and were divided into geographical "zones". At all times herein the State of Washington was part of the so-called "Portland zone" which included the States of Oregon, Washington, Idaho and portions of Montana and Wyoming and the then Territory of Alaska. Plaintiff's "Portland zone" organization for each of its Chevrolet, Pontiac and [fol. 54] Oldsmobile Divisions consisted of a field organization of personnel. ~~who supervised plaintiff's retail dealer organizations during the audit periods here in question.~~

XII

Each "zone", including the "Portland zone", was and is composed of geographical "districts", ~~under the supervision and direction of "district managers" and other personnel of the plaintiff's "Portland zone" offices~~ for the Chevrolet, Oldsmobile and Pontiac Divisions during the audit periods here in question.

XIII

Included within each district in the State of Washington during the audit periods here in question ~~as the responsibility of each "district manager" and other personnel~~ are the various retail dealers ~~of the plaintiff's "dealer organization"~~ within the district who are independently engaged in the business of retail sale of plaintiff's manufactured products and to whom wholesale sales of the plaintiff's manufactured products were made by the plaintiff, the gross proceeds of which are included in the tax bases for each of the plaintiff's divisions here in question.

XIV

Each dealer is assigned a so-called "zone of influence" ~~which is in fact a geographical franchise~~ area as to which plaintiff's retail dealers enjoy the distinction of being the only retail outlet ~~for that~~ *in that* area of the specific manufactured product for which he is dealer and as to which such dealers are considered responsible for development of plaintiff's share of the retail market within each such district.

XV

Plaintiff's district and zone employees for each of its Chevrolet, Pontiac and Oldsmobile Divisions are charged [fol. 55] with the responsibility for the development, maintenance and promotion of ~~plaintiff's~~ retail dealer ~~organisations~~ *representation*; the promotion ~~and sale~~ of plaintiff's manufactured products; and the promotion, development and maintenance of good will and public esteem for the plaintiff's manufactured products. ~~The activities of the plaintiff's district and zone employees within the State of Washington during the audit period here in question with respect to the development, maintenance and promotion of plaintiff's retail dealer organizations for its Chevrolet, Pontiac and Oldsmobile Divisions, the promotion and sale of plaintiff's manufactured products, and the promotion, development and maintenance of good will and public esteem for plaintiff's manufactured products were essential to the completion of the sales of plaintiff's products, the gross proceeds of which are included in the tax base here in question.~~

~~The same activities prior to, during, and subsequent to the audit periods here in question were and are essential to maintenance of plaintiff's share of the retail market and wholesale market in the State of Washington.~~

XVI

The relationship between the plaintiff and its Chevrolet, Pontiac and Oldsmobile retail dealers is uniformly defined by written contract in the form of Exhibit 2, identified as "Dealers Selling Agreement" which is in all material respects uniform for all dealers of the plaintiff's dealer organizations in the State of Washington for the audit periods here in question. ~~In general,~~ *D*ealers are individual proprietorships, partnerships or corporations having no corporate relationship to plaintiff, except that another division, Motors Holding Division, in infrequent instances, loans temporarily portions of the substantial capital required to initiate or maintain a dealership.

[fol. 56] The dealer's facilities are ~~generally~~ owned by the dealer. A dealer's tools, supplies, signs and his inventory of parts, accessories, new and used automobiles are owned by the dealer, subject, as in the case of new automobiles, to financing arrangements with banks or finance companies, which frequently includes General Motors Acceptance Corporation, a wholly owned corporate subsidiary of the plaintiff.

XVII

~~The development, maintenance and expansion of the plaintiff's dealer organizations within plaintiff's Chevrolet, Pontiac and Oldsmobile Divisions throughout the State of Washington by member-employees of the plaintiff's field organizations operating in the State of Washington are decisive factors in establishing and holding the market in this state for the sale of its automobiles, trucks, parts and accessories of each of plaintiff's divisions, the business activities of which are involved in this proceeding.~~

~~So also the development, maintenance and expansion of the plaintiff's retail dealer organization for its Chevrolet, Pontiac and Oldsmobile Divisions prior to, during, and subsequent to the audit periods here in question were and are essential to maintenance of plaintiff's share of the retail and wholesale markets in the State of Washington.~~

XVIII

Applicants for openings in the plaintiff's dealer organization are screened by the plaintiff's "district managers" and if considered eligible are referred to the plaintiff's "zone manager". Each of plaintiff's dealers executes a contract with the plaintiff essential in all respects for all divisions of the plaintiff which are involved in this proceeding, which is identified as "Dealers Selling Agree-
[fol. 57] ment" and is included in the record as Exhibit 2.

XIX

The maintenance, supervision and control of the plaintiff's dealer organization is conducted by the plaintiff's "zone managers" and "district managers" for each of plaintiff's Chevrolet, Oldsmobile and Pontiac Divisions.

XX

Plaintiff's "district managers" have the most direct contacts with the ~~plaintiff's~~ dealers *retail* ~~organization~~, and these relationships are conducted almost entirely inside the State of Washington and generally at the dealer's place of business. The frequency of contact between the district manager and a dealer included within his "district" depends upon the size of the dealership and the nature and extent of the problems confronting the dealer and the plaintiff. The district manager's responsibilities to the plaintiff and his relationship to the ~~plaintiff's~~ dealers *retail* ~~organization~~ in the State of Washington for the audit periods here in question are and were at all times here in question defined as including the maintenance of the required dealer *representa-* ~~organization~~ *tion* in the territory assigned to him and the promotion of the business of the division within his assigned territory. ~~"In carrying out this responsibility, he is to contact assigned dealers of branches in a supervisory or advisory capacity to ascertain that the dealers have proper sales~~

~~organizations and to acquaint the dealers with the divisional sales policies and promotional and training plans, and to improve the selling ability of the dealers (retail) sales organization. His duties include contacting assigned dealers or branches at designated intervals and securing orders for the division's products, assisting the outlet sales manager in organizing and training of sales force, assisting in the controlling the used product inventory, and advising outlets of changes in divisional policies".~~ In addition, the district manager passes on to dealers any knowledge gained of competitive products and is responsible for ~~closing "open points" within the dealer organization~~ *seeking suitable dealers at points where there is no dealer* within his territory.

[fol. 58]

XXI

During the audit periods here in question, the district managers responsible for the dealer organization of the Chevrolet Division of the plaintiff in the counties within the State of Washington, other than the nine southern counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, sales to which have been classified as Chevrolet Class A sales, were residents of the State of Washington. District managers have no secretary or other assistant, and maintain no business listings, but use their residence phones for business purposes *and receive business mail at their residences.* For the most part their activities are conducted in the dealers' places of business and their reports to the zone office are made in person at the zone office, or by mail.

XXII

The procedure for ordering automobiles, trucks, parts and accessories from the plaintiff's Chevrolet, Pontiac and Oldsmobile Divisions was and still is initiated by the district manager who obtains from each dealer within his territory an annual "projection" of the dealer's requirements

for automobiles, and thereafter quarterly "estimates" of dealer requirements, followed by 30-day "estimates" of dealer requirements. Thereafter a final form of "order" is sent by the dealer to the plaintiff's zone offices, usually by mail, sometimes by telephone, and infrequently by the district manager who then mails or delivers them to the zone offices.

The "final orders" are accepted or rejected at the zone office or at the factory, and, if accepted, are filled by ship-
[fol. 59] ment from the factory by common carrier f.o.b. the factory.

XXIII

if a dealer's "~~final~~ orders" of automobiles are less than their ~~annual or~~ quarterly ~~or monthly~~ "projections" of dealer needs, then the district manager and/or the zone manager "counsels and advises" the ~~plaintiff's~~ dealers to determine the cause and to assist the dealer in taking "corrective action".

~~All of the foregoing activities were decisive factors in establishing and holding the market in this state for the sale of the plaintiff's automobiles, trucks, parts and accessories, and all of the foregoing activities contributed to the completion of the sales of the plaintiff's products, the gross proceeds of which are included in the tax bases here in question for each of plaintiff's Chevrolet, Oldsmobile and Pontiac Divisions.~~

XXIV

The plaintiff's field organizations ~~which supervise the activities of the plaintiff's dealers organizations for its Chevrolet, Pontiac and Oldsmobile Divisions~~ devote the bulk of their efforts to the supervision and assistance of the plaintiff's retail dealers ~~organization~~ with the view of obtaining maximum conformance to the specifications and conditions required of the dealers pursuant to the terms of the dealer's selling agreement. To this end the plaintiff achieves its wholesale sales of the trucks, cars, parts and accessories, the wholesale value of which was included in the assessment base involved in these proceedings by the

maintenance and development of a "strong retail dealer organization". "A strong retail dealer" is a dealer who is financially able, who maintains a well-stocked parts department, a well-stocked, serviced and managed service department, a well-stocked and managed sales department, a prosperous used-car lot, a clean, well-located sales location and sales room in charge of an experienced manager.

[fol. 60]

XXV

The dealer's selling agreement

~~The extent of the control maintained by the plaintiff through its field organizations over the members of the dealer organization is generally prescribed by the dealer's selling agreement. Thus~~ The dealer is expected to maintain a place of business and a sales room and a service station satisfactory to the General Motors. The dealer may not establish a branch sales office or service organization nor move a sales room or service organization without written consent of the plaintiff. The dealer is required to maintain a satisfactory uniform accounting system designated by the plaintiff. Every member of the dealer organization is required to, and does, submit his books, records and accounts to the plaintiff for examination from time to time. The dealer is required to meet minimum capital requirements specified and determined by the plaintiff. The dealer is required to, and does, maintain and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally by the plaintiff. The dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. The dealer is required to maintain a service department sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products, and the dealers uniformly agree to buy such special tools as are developed by the plaintiff for the servicing of its new products purchased by retail purchasers, so as to "render proper services to retail purchasers of General Motors products".

~~The foregoing activities by the plaintiff, acting through its subsidiary organizations, are essential factors in establishing and holding the market in the State of Washington for the retail sale of its automobiles, trucks, parts and accessories, the wholesale value of which was included in the tax assessments involved in these proceedings.~~

[fol. 61] XXVI

~~The plaintiff, acting by and through its field organizations described hereinabove, develops, maintains and expands its share of the wholesale market for the plaintiff's manufactured products of trucks, automobiles, parts and accessories by other activities conducted within the State of Washington which are essential individually, and decisive cumulatively, in the development, establishment, maintenance and expansion of the plaintiff's market in this state for the wholesale sale of its automobiles, trucks, parts and accessories.~~ These activities conducted in the State of Washington include sales training programs, various sales and incentive contests and programs offered and conducted separately or jointly with the dealer and other components of the General Motors organization, national advertising programs and local advertising programs conducted by the plaintiff through other media, joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; on-the-job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of the plaintiff's manufactured products.

~~There are many other activities which are indirectly related to the sale at wholesale of the plaintiff's automotive products to the members of its dealer organization in the State of Washington. Thus its procedure for handling customer complaints, its procedure for making warranty adjustments, its procedure for financing automobiles, its procedure for insuring of automobiles, are all part and parcel of developing and holding its market at the local,~~

district, zone, regional and national levels, respectively. [fol. 62] The plaintiff engages in financing dealerships and financing inventories of dealers and insuring automobiles and dealers through other divisions of the plaintiff or wholly owned subsidiaries of the plaintiff. The object of the plaintiff's business activities in the State of Washington is to supervise and assist the members of its retail dealers organization in every phase of the retail sale of the plaintiff's products. The court finds that the stimulation of retail sales through these various media and methods described above is an essential factor in establishing and holding the plaintiff's wholesale market in this state for its automobiles, trucks, parts and other accessories and in concluding the sales of cars, trucks, parts and accessories, the wholesale value of which was included in the tax base in the assessments here in question.

XXVII

With respect to plaintiff's Chevrolet Class A transactions involving the sale of Chevrolet parts, trucks, automobiles and accessories by the plaintiff to its Chevrolet retail dealers, in addition to the foregoing characteristics of plaintiff's field organization, plaintiff's Chevrolet Division maintained at all times here in question for the convenience and assistance of ~~plaintiff's~~ Washington retail dealers ~~organization~~ a Seattle branch zone office. The Seattle branch zone office was maintained to assist the plaintiff's purchasers (retail dealers) within the area served by the office to give better service on orders and in particular to get faster delivery. Such a service had a direct connection with the making of the sales of Chevrolet automobiles, trucks, ~~parts and accessories~~ to the dealers in the foregoing regions of Washington.

XXVIII

~~The court specifically finds that the net effect of all of the plaintiff's promotional activities set forth in the preceding findings of fact were and are decisive factors in the estab-~~

[fol. 63] ~~lishing of and the holding of the plaintiff's market in the State of Washington for the sale of its automobiles, trucks, parts and accessories, and furthermore that the said activities were essential to the completion of each of the Chevrolet Class A transactions, the gross proceeds of which are included in the tax base here in question.~~

XXIX

The court finds that the business activities conducted by the plaintiff within the State of Washington with respect to Chevrolet Class B, Pontiac and Oldsmobile transactions are essentially the same as those for the Chevrolet Class A transactions hereinbefore described, except that (1) there was not a separate "zone office" or "branch zone office" for the Pontiac and Oldsmobile Divisions of the plaintiff corporation situated within the State of Washington; (2) plaintiff's Chevrolet dealers in the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla to whom Chevrolet Class B sales were made were situated in "geographical districts" assigned to "district managers" who were managed and controlled by the Portland "zone office" of the Chevrolet Division of plaintiff corporation for the audit periods in question. The district managers and other personnel who maintain, solicit, promote and deal with plaintiff's retail Chevrolet dealer organization in the said nine southern counties of the State of Washington were also assigned dealers in Oregon and lived in Oregon in most instances; (3) except, further, that plaintiff's Pontiac and Oldsmobile Divisions did maintain small stocks of automobiles *about which sales there is no controversy* in public warehouses within the State of Washington during the audit periods here in question; and (4) the field organizations assigned to the plaintiff's retail dealer organizations in the State of Washington by plaintiff's Pontiac and Oldsmobile Divisions were smaller than the field organization of the plaintiff's Chevrolet Division.

[fol. 64]

XXX

General Motors Parts Division, which has the function of warehousing and shipping parts and accessories for all of plaintiff's manufactured automobiles and trucks, during the audit period here in question maintained a warehouse in Seattle and a warehouse in Portland for servicing and supplying of parts and accessories to the plaintiff's Chevrolet, Oldsmobile and Pontiac retail dealers within the State of Washington. The General Motors Parts Division warehouse at Seattle carried "heavy volume items" while the less frequently called-for items were carried in the General Motors Parts Division warehouse in Portland. All of plaintiff's retail Chevrolet, Pontiac and Oldsmobile dealers in the State of Washington obtained their supply of parts and accessories for resale and servicing of new and used automobiles during the audit periods here in question from the plaintiff's parts warehouses accordingly.

~~The maintenance of the Seattle warehouse served plaintiff's purchasers (retail dealers) within the State of Washington and had a direct connection with the making of the sales of the parts and accessories, the gross proceeds of which are included in the assessment base here in question.~~

XXXI

~~Member dealers of plaintiff's dealer organization are required by terms of its dealers selling agreement to maintain adequate stocks of parts, the amount or quantity of which is determined by agreement between General Motors and its retail dealers. The availability in the State of Washington of adequate and readily available supplies of parts and accessories for plaintiff's other manufactured products sold by its Chevrolet, Oldsmobile and Pontiac Divisions contributes materially to the maintaining, development and expansion of plaintiff's retail and wholesale markets, to the maintenance of good will for its manufactured products, and further contributed materially to the~~ [fol. 65] ~~consummation of the Chevrolet Class A and Class B and Pontiac and Oldsmobile transactions, the gross proceeds of which are herein included in the tax base for the audit periods here in question.~~

XXXII

~~Recognizing that both the plaintiff and member dealers of its retail dealer organizations of its Chevrolet, Pontiac and Oldsmobile Divisions have a mutual interest in maintaining owner good will and that, in order to maintain such good will, prompt and satisfactory service at reasonable costs must be furnished the owners of plaintiff's chief product, motor vehicles, the members of plaintiff's dealer organizations for each of its Chevrolet, Pontiac and Oldsmobile Divisions are required to carry in stock specific volumes of parts, to buy special tools developed by the plaintiff which the plaintiff deems necessary in order that member dealers will be able to render proper service to retail customers; they are further required to install "flat rate systems" of charges for labor for repair of such motor vehicles sold to retail customers, to render service to retail purchasers of plaintiff's manufactured motor vehicles according to the terms of "owner service policies" provided by the plaintiff, and to make "every reasonable effort to satisfy owners" of the plaintiff's manufactured motor vehicle products. The court finds that the plaintiff's field organizations for its Chevrolet, Pontiac and Oldsmobile Divisions during the audit periods here in question developed, solicited and maintained the plaintiff's dealer organizations to obtain compliance with the foregoing conditions, the accomplishment of which contributed materially to the maintenance, development and expansion of plaintiff's retail and wholesale markets and of the good will of the public for plaintiff's manufactured products and specifically to the consummation of the Chevrolet Class A and Class B, Chevrolet parts and accessories, and Pontiac and Olds-~~ [fol. 66] ~~mobile transactions, the gross proceeds of which are included in the tax base for the audit periods here in question.~~

XXXIII

With respect to the "dealer bonus question", the court finds that dealer bonuses, which are defined in paragraphs 7 and 8 of the stipulations dated December 8, 1959, submitted to the court by the parties, provide that dealers shall

be paid without condition a specific sum at the end of each calendar year. The total amount of dealer bonuses plus interest involved in these proceedings is $1,036.50 paid to the State of Washington on June 25, 1954. The court finds that a so-called "dealer bonus" is in fact a deduction from the total purchase price. The dealer had an absolute right to the specified sums according to his contract with the plaintiff. The court further finds that while automobiles were sold only for cash, certain parts and accessories were sold to dealers on credit and at least one purpose of the "bonus" arrangement was to create a fund for protection of plaintiff on those credit sales. The name of the transaction is not controlling, and the court finds that the "bonus" was not a part of the wholesale sales price, the gross proceeds of which were included in the measure of the tax for the audit periods here in question.

XXXIV

With respect to the "parts return" question, the court finds that the retail dealers of plaintiff's dealer organization, in accordance with provisions of the dealers selling contract, made annual returns of obsolete parts to the plaintiff and were allowed credits therefor. The plaintiff's contention that these amounts are deductible from the gross proceeds of sale as conditional sales is not supported by the facts in this proceeding. The court finds that such parts returns were in fact re-purchases by the plaintiff, the amounts of which are not properly excludable from the [fol. 67] gross proceeds of sales of products by the plaintiff to its retail dealer organizations, the gross proceeds of which are included in the tax base here in question.

The parties have agreed that the return of defective parts is a proper deduction and that parts returned within 30 days of purchase are proper deductions according to applicable rule of the Tax Commission; however, plaintiff has made no showing that the assessment base here in question includes any amounts representing purchase price of defective parts or parts returned within thirty days.

From the foregoing Findings of Fact the court makes the following:

Conclusions of Law:

I

The court has jurisdiction of the parties and of the subject matters of this cause.

II

The taxes assessed by the Washington State Tax Commission against the plaintiff General Motors Corporation for the privilege of engaging in business in the State of Washington with reference to "Chevrolet Class A transactions" were proper and constitutional and in no way violate the interstate commerce clause of the Federal Constitution. With respect to these transactions, the State Tax Commission properly denied the plaintiff's petition for refund of taxes and interest paid to the State of Washington in the amounts of $233,581.45.

III

The plaintiff is entitled to refund of the taxes paid to the State of Washington on assessments for taxes measured by the gross proceeds of "Chevrolet Class B transactions" [fol. 68] in the amount of $15,025.15 together with interest from June 25, 1954, until judgment is satisfied plus $762.00 with interest thereon from September 15, 1950, until judgment is satisfied; plus $1,312.53 with interest thereon from November 15, 1950, until judgment is satisfied; plus $1,198.62 with interest thereon from January 15, 1951 until judgment is satisfied; plus $1,044.24 with interest thereon from March 15, 1951, until judgment is satisfied; plus $1,043.94 with interest thereon from May 15, 1951 and $477.10 with interest thereon from July 15, 1951, until judgment is satisfied.

IV

With respect to the Chevrolet parts and accessories transactions concluded by the Chevrolet Division of General Motors Corporation for the audit periods here in question representing the amount of $14,699.68 plus interest in the amount of $1,069.98, the court concludes that the State

of Washington correctly imposed the tax as described therein and that the State of Washington correctly denied the plaintiff's application for refund of the amount therefor.

V

With respect to the plaintiff's Oldsmobile transactions, the court concludes that the plaintiff is entitled to refund in the sum of $16,844.75, plus interest on $2,560.64 from September 15, 1960, until judgment is satisfied; plus interest on $3,061.47 from November 22, 1950, until judgment is satisfied; plus interest on $5,416.39 from January 20, 1951, until judgment is satisfied; plus interest on $2,433.93 from March 22, 1951, until judgment is satisfied; plus interest on $3,372.32 from May 17, 1951, until judgment is satisfied.

VI

With respect to the plaintiff's Pontiac transactions the court concludes that the plaintiff is entitled to refund of the amount of tax assessments therefor in the amount of [fol. 69] $15,876.80, plus interest on $3,969.20 from November 20, 1950, until judgment is satisfied; plus interest on $3,969.20 from January 20, 1951, until judgment is satisfied; plus interest on $3,969.20 from March 20, 1951, until judgment is satisfied; plus interest on $3,969.20 from May 20, 1951, until judgment is satisfied.

VII

The court concludes that plaintiff is entitled to refund of the amounts of taxes paid measured by dealer bonuses paid to the members of its retail dealer organization by its Chevrolet dealer organization with respect to Chevrolet transactions which entitles plaintiff to refund in the amount of $1,036.50 plus interest thereon from January 25, 1954, until judgment is satisfied.

VIII

With respect to the "parts return" transactions, the court concludes that the Tax Commission correctly included in the assessment base here in question the total sales price

to the plaintiff's retail dealer organization and correctly denied the plaintiff's petition for refund of the amounts claimed which have been fixed by stipulation as in the amount of $388.41.

IX

The court concludes that under the holding of *Field Enterprises* v. *State*, 77 Supr. Ct. 55, 352 U.S. 806, 1 L. ed (2d) 39, aff'g 47 Wn. (2d) 852, 289 P. (2d) 1010, and *B. F. Goodrich Co.* v. *State*, 38 Wn. (2d) 663, 231 P. (2d) 325, the existence of an office or other central location for each of the divisions of the plaintiff General Motors Corporation whose transactions are involved in these proceedings is essential to the facts presented by this case to remove the business activities of the plaintiff General Motors Corporation from the protection of the interstate commerce [fol. 70] clause. The court concludes that the imposition of the tax upon the business activities of the plaintiff General Motors Corporation for the activities of its Pontiac, Oldsmobile Divisions and the Chevrolet Division with respect to the Chevrolet Class B transactions would constitute an impost upon interstate commerce in that the sales are concluded at points outside the state and processed by offices of the said respective Divisions of the plaintiff's business organization and divisions at points outside the state, notwithstanding the fact that plaintiff conducts the business activities within the state through the person of its employees and field personnel which contribute materially to the consummation of the sales, the gross proceeds of which were included in the assessment bases for purposes of computing the Washington business and occupation taxes which are involved in these proceedings.

Judgment may be entered accordingly.

Done In Open Court this ..... day of ....., 1961.

....., Judge.

Presented by:

Copy received and Notice of Presentation waived:

[fol. 71] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

vs.

STATE OF WASHINGTON, et al., Defendants.

PROPOSED JUDGMENT SUBMITTED BY DEFENDANTS—
Filed January 9, 1961

This matter came on for hearing regularly on the 14th day of December, 1959, and was continued from time to time thereafter.

The Court having made and entered its Findings of Fact and Conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed:

I

That the plaintiff shall have judgment for refund of taxes paid in the sum of $ ..... plus interest from the date hereof until judgment is satisfied.

II

The plaintiff's Notice of Appeal and Complaint for Refund is in all other respects denied with prejudice.

III

Neither party shall recover costs in this proceeding.

Done in Open Court this ..... day of ....., 1961.

.....
Judge

Presented by:

Copy received and Notice of Presentation waived:

. . . . . .

[fol. 87] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

vs.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, Defendants.

Findings of Fact and Conclusions of Law—March 16, 1961

This case came on regularly for trial on December 14, 1959, before the Honorable Charles T. Wright, Judge of the above entitled court, and continued through December 15, 1959. Plaintiff appeared by DeWitt Williams of Rosling, Williams, Lanza & Kastner, its attorneys, and by Henry M. Hogan and Donald K. Barnes of counsel, and defendants appeared by their attorneys, John W. Riley and Timothy R. Malone, Assistant Attorneys General. Following said trial counsel submitted briefs prior to final oral argument, which argument was on October 25, 1960. On December 1, 1960, the Court rendered its memorandum opinion.

The parties stipulated certain facts by Stipulations hereinafter referred to and identified. These stipulations, other exhibits and testimony, were admitted into evidence. Statements in these Findings and Conclusions are for convenience generally in the present tense and unless otherwise specifically stated were also true for all periods pertinent to the action. The Court having considered all the evidence, statements made in open court, the records and files herein and the briefs and oral arguments of counsel and being fully advised in the premises, now makes the following:

[fol. 88] Findings of Fact

I

Plaintiff is a corporation organized and existing under the laws of the State of Delaware, qualified to do business in the State of Washington and has paid all license fees due said state.

II

At all times herein mentioned the defendant, State of Washington, was and now is a sovereign state and one of the states of the United States of America; the defendants William S. Schumacher, Clark Squire and A. E. Hankins are now the duly appointed, qualified and acting Commissioners of the Tax Commission of the State of Washington and as such constitute the Tax Commission of the State of Washington.

III

The Chevrolet Division, Pontiac Division, Oldsmobile Division and General Motors Division are divisions of the plaintiff corporation, but not separately incorporated.

IV

At all times during the audit periods here in question the plaintiff was engaged in business within the State of Washington.

V

Plaintiff owns and operates factories for the manufacture of automobiles, trucks and other merchandise. Sales are made by plaintiff of automobiles and trucks and parts to dealers in this state pursuant to orders therefor by said dealers. Said automobiles and trucks and parts are manufactured outside of the State of Washington and shipped into this state. Activities conducted primarily outside the state include the design, engineering, fabrication, assembly and delivery of products, the procurement of materials, components and supplies, the general, executive, operating, [fol. 89] financial and sales management, the receipt, proc-

essing, recording, approving, accepting and filling of orders, the billing and receipt of payment, the investigation, approval and execution of customer contracts (dealer franchises), the investigation and extension of credit, the composition and placement of advertising, and many others.

VI

Plaintiff's business activities at all times herein included the sale of automobiles, trucks, parts and accessories to retail dealers of plaintiff's manufactured products.

VII

Plaintiff conducts its business activities through divisions which operate substantially independently of each other. This proceeding involves plaintiff's business activities conducted by its Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions.

VIII

During the audit periods herein, plaintiff's business activities included the establishment and maintenance of effective dealer representation. Such retail establishments to which plaintiff sold its manufactured products were generally located on a geographical basis by each of plaintiff's Chevrolet, Oldsmobile and Pontiac Divisions.

IX

The taxes in question were measured by the gross proceeds of plaintiff's sales of automobiles, trucks, parts and accessories to the plaintiff's retail dealers within the State of Washington.

The amounts of gross receipts from certain sales of manufactured products by plaintiff to plaintiff's retail dealers in the State of Washington which are included in the assessment bases here in question are not in question. Plain-
[fol. 90] tiff's gross receipts from other sales to its dealers in the State of Washington and the computation of the tax assessments and interest which are in dispute in these pro-

ceedings have been fixed by pre-trial stipulation of the parties dated December 8, 1959 and filed in these proceedings.

X

During the audit periods here involved, the rate of tax prescribed by the laws of the State of Washington for the privilege of engaging in business (wholesaling) was three-tenths of one per cent (.003) measured by taxpayer's gross receipts from its taxable business activities. The resulting business and occupation tax (wholesaling) and interest which are disputed by plaintiff and which are involved in these proceedings are covered by said stipulation of December 8, 1959. Plaintiff has paid other taxes which are not here in question for the audit period here involved.

XI

All the products sold by plaintiff to its retail dealers in the State of Washington, the gross proceeds of which are included in the assessment base here in question, were manufactured by plaintiff at points outside the State of Washington.

XII

Plaintiff has claimed exclusion of the gross receipts from sales by it to its Washington dealers by its Chevrolet, Oldsmobile, Pontiac and General Motors Parts Divisions for a variety of reasons which makes convenient the following classification of factual patterns:

1. The first question concerns sales made by plaintiff's Chevrolet Division to dealers in the State of Washington for the audit periods here in question in the counties in Washington other than the counties of Asotin, Clark, Co-
[fol. 91] lumbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, the gross proceeds of which are included in the assessment base here in question. For convenience, these transactions are hereinafter sometimes referred to as "Chevrolet Class A transactions". The amount of taxes plus interest involved was settled by said stipulation of the parties dated December 8, 1959, which

amount was paid by the plaintiff which thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund in this court within the time allowed by law therefor.

2. The second factual pattern involves the plaintiff's business activities with respect to its Chevrolet Divisions conducted for the audit periods here in question with dealers in the nine southern counties of the State of Washington identified as Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, which resulted in sales of Chevrolet trucks and automobiles, the gross proceeds of which are included in the assessment base here in question. For convenience, these transactions are hereinafter sometimes referred to as "Chevrolet Class B transactions." The amount of tax involved was settled by stipulation of the parties to be in the amount of $13,976.33 plus $1,049.24 interest paid June 25, 1954, $762.57 paid on September 15, 1950, $1,312.53 paid on November 15, 1950, $1,198.62 paid on January 15, 1951; $1,044.24 paid on March 15, 1951; $1,043.94 paid May 15, 1951, and $477.10 paid on July 15, 1951. Plaintiff timely petitioned the Washington Tax Commission for refund of the foregoing amounts, which petitions for refund were denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund in this court within the time allowed by law therefor.

3. Plaintiff paid business and occupation taxes in the [fol. 92] amount of $14,699.68, computed at the rate of one-third of one per cent (.003%) of the gross proceeds from wholesale sales of Chevrolet parts and accessories to Chevrolet dealers in the State of Washington during the audit periods here in question, plus interest of $1,069.98 on June 25, 1954. During the audit periods here in question, parts sold to retail dealers, the gross proceeds of which are included in the assessment bases in question here (including the foregoing sales to plaintiff's Chevrolet dealers), were shipped on order to plaintiff's Chevrolet, Pontiac and Oldsmobile dealers by General Motors Parts Division from a

warehouse in Portland, Oregon, the operations of which are further described in later Findings of Fact.

4. Plaintiff conducted business activities by its Oldsmobile Division which resulted in wholesale sales of Oldsmobile cars, parts and accessories to Oldsmobile dealers located in Washington, the gross proceeds of which are included in the assessment base for the audit periods here in question. For convenience, these transactions are hereinafter referred to as "Oldsmobile transactions". The amount of tax involved was settled by stipulation of the parties to be in the amount of $16,844.75, $2,560.64 was paid on September 15, 1950; $3,061.47 on November 22, 1950; $5,416.39 on January 20, 1951; $2,433.93 on March 22, 1951; and $3,372.32 on May 17, 1951, after which the plaintiff timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

5. Plaintiff conducted business activities by its Pontiac Division for the audit periods here in question resulting in sales to Washington Pontiac dealers of cars, parts and accessories, the gross proceeds of which are included in the [fol. 93] assessment base. For convenience, these transactions are hereinafter referred to as "Pontiac transactions". The amount of tax involved was settled by stipulation of the parties to be in the amount of $15,876.80; $3,969.20 of which was paid on November 20, 1950; $3,969.20 on January 20, 1951; $3,969.20 on March 20, 1951; and $3,969.20 on May 20, 1951. The plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

6. Plaintiff contends that dealer bonuses paid by the plaintiff to retail dealers at the end of each fiscal year are not part of the total purchase price and are, therefore, properly excludable from the tax base here in question. For convenience, these transactions are hereinafter referred to as the "dealer bonus question". The amount of

tax involved here which is measured by dealer bonuses paid by plaintiff to Chevrolet dealers with respect to Chevrolet Class A transactions was settled by said stipulation of December 8, 1959 of the parties to be in the amount of $963.22 and $73.28 interest, which amount was paid by the plaintiff on June 25, 1954. Plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

7. Plaintiff contends that parts returned to the plaintiff by dealers within the State of Washington pursuant to contractual agreement therefor, are not a repurchase by the plaintiff but are properly deductible from the gross sales by the plaintiff and, therefore, properly excludable from the tax base here in question. For convenience, this question is hereinafter referred to as "parts-return question". The amount of tax and interest involved was settled [fol. 94] by stipulation of the parties to be in the amount of $388.41 with respect to the sale of Chevrolet parts and accessories to retail dealers in Washington, which amount was paid by the plaintiff on June 25, 1954. Plaintiff thereafter timely petitioned the Washington Tax Commission for refund. Plaintiff's petition for refund was denied by Tax Commission order, after which plaintiff filed its Notice of Appeal and Complaint for Refund within the time allowed by law therefor.

XIII

In order to provide for the distribution and sale of the manufactured products of Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions, plaintiff at all times herein maintained organizations of employees serving its Chevrolet, Pontiac and Oldsmobile Divisions on a national, regional, zone and district level.

XIV

At all times during the audit periods involved in these proceedings, the State of Washington was included within

the western region of the plaintiff's national organization which covered the eleven western states. Such regions are and were divided into geographical "zones". At all times herein the State of Washington was part of the so-called "Portland zone" which included the States of Oregon, Washington, Idaho and portions of Montana and Wyoming and the then Territory of Alaska. Plaintiff's "Portland zone" organization for each of its Chevrolet, Pontiac and Oldsmobile Divisions consisted of a field organization of personnel.

XV

Each "zone", including the "Portland zone", was and is composed of geographical "districts" for the Chevrolet, Oldsmobile and Pontiac Divisions during the audit periods here in question.

[fol. 95]

XVI

Within each district in the State of Washington are located the various retail dealers who are independently engaged in the business of retail sale of plaintiff's manufactured products and to whom wholesale sales of the plaintiff's manufactured products were made by the plaintiff, the gross proceeds of which are included in the tax bases for each of the plaintiff's divisions here in question.

XVII

Each dealer is assigned a so called "zone of influence" as to which plaintiff's retail dealers enjoy the distinction of being the only retail outlet located in that area of the specific manufactured product for which he is dealer and as to which such dealers are considered responsible for development of plaintiff's share of the retail market within such area.

XVIII

Plaintiff's zone employees, including district managers, for each of its Chevrolet, Pontiac and Oldsmobile Divisions are charged with the responsibility for the development, maintenance and promotion of retail dealer representation;

the promotion of plaintiff's manufactured products; and the promotion, development and maintenance of good will and public esteem for the plaintiff's manufactured products.

XIX

The relationship between the plaintiff and its Chevrolet, Pontiac and Oldsmobile retail dealers is uniformly defined by written contract in the form of Exhibit 2, identified as "Dealers Selling Agreement" which is in all material respects uniform for all dealers in the State of Washington for the audit periods here in question. Dealers are individual proprietorships, partnerships or corporations having no corporate relationship to plaintiff, except that [fol. 96] another division, Motors Holding Division, in infrequent instances, loans temporarily portions of the substantial capital required to initiate or maintain a dealership.

The dealer's facilities are owned by the dealer. A dealer's tools, supplies, signs and his inventory of parts, accessories, new and used automobiles are owned by the dealer, subject, in the case of new automobiles, to financing arrangements with banks or finance companies, which frequently includes General Motors Acceptance Corporation, a wholly owned corporate subsidiary of the plaintiff.

XX

From the time of receipt and acceptance of an order to consummation by delivery of product and receipt of payment, every step on plaintiff's part in each of the types of transactions in dispute is performed at an office, warehouse or factory in some other state except such expediting of deliveries as herein found to have been done by the Seattle Branch Office with respect to Chevrolet Class A transactions. By reason of the nature of plaintiff's business, solicitation of orders is not a necessary or usual step in its sales procedures.

XXI

The direct effect of the activities in Washington of plaintiff's employees is upon the sales and operations of the independent retail dealers.

XXII

Each of plaintiff's customers in the State of Washington is incorporated or otherwise organized wholly independently of plaintiff and has no relation to plaintiff except as an independent purchaser of plaintiff's products. Such dealers purchase and sell other products, not manufactured by nor procured from plaintiff.

[fol. 97] XXIII

Plaintiff's "district managers" have the most direct contact with retail dealers, and these relationships are conducted almost entirely inside the State of Washington and generally at the dealer's place of business. The district manager is supervised by the zone office and he reports to said office. The frequency of contacts between the district manager and a dealer included within his "district" depends upon the size of the dealership and the nature and extent of the problems confronting the dealer and the plaintiff. The district manager's responsibilities to the plaintiff and his relationship to the retail dealers in the State of Washington for the audit periods here in question were defined as including participation in the maintenance of dealer representation in the territory assigned to him and the promotion of the business of the division within his assigned territory, and the follow-through and administration of programs, plans and procedures within their district that will help to develop the dealer representation, for the best possible financial and sales results. They do not accept or fill orders or approve credit, receive payment or make delivery. In addition, the district manager passes on to dealers any knowledge gained of competitive products and is responsible for seeking suitable dealers at points where there is no dealer.

XXIV

With respect to the transactions in dispute, plaintiff at no time localized itself in Washington through an office, outlet or place of business owned or leased by plaintiff, with the exception of the relation of Chevrolet's so called

"Branch Office" to certain sales of that division. The transactions included in the assessment base were made without any participation or assistance whatsoever from any office, outlet or other place of business owned or leased by plain-
[fol. 98] tiff in this state (with the exception of the relation of Chevrolet's so called "Branch Office" to certain sales of that division).

XXV

Plaintiff's Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions operated substantially independently of each other and of other divisions and subsidiaries. The transactions of each division are in no way related to the transactions of any other division, and the transactions of the Portland warehouse of the General Motors Parts Division were in no way related to the transactions of the Seattle warehouse of that division.

XXVI

During the audit periods here in question, the district managers of the Chevrolet division of the plaintiff in the counties within the State of Washington, other than the nine southern counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla, were residents of the State of Washington. District managers have no secretary or other assistant, and maintain no business listings, but use their residence phones for business purposes and receive business mail at their residences. For the most part their activities are conducted in the dealers' places of business and their reports to the zone office are made in person at the zone office, or by mail.

XXVII

The district manager obtains from each dealer within his territory quarterly "projections" of the dealer's requirements for automobiles. Thereafter an "order" is sent by the dealer to the plaintiff's zone offices, usually by mail, sometimes by telephone, and infrequently by the district manager who then mails or delivers them to the zone offices. "Orders" are accepted or rejected at the zone office or at

[fol. 99] the factory, and, if accepted, are filled by shipment from the factory by common carrier f.o.b. the factory.

XXVIII

If a dealer's orders of automobiles are less than their "projections" of dealer needs, then the district manager and/or the zone manager "counsels and advises" the dealer to determine the cause and to assist the dealer in taking "corrective action".

XXIX

The plaintiff's field organizations devote the bulk of their efforts to the assistance of the plaintiff's retail dealers with the view of obtaining maximum conformance to the specifications and conditions required of the dealers pursuant to the terms of the dealer's selling agreement. To this end the plaintiff achieves its wholesale sales of the trucks, cars, parts and accessories, the wholesale value of which was included in the assessment base involved in these proceedings by the maintenance and development of a "strong retail dealer representation". "A strong retail dealer" is a dealer who is financially able, who maintains a well stocked parts department, a well stocked, serviced and managed service department, a well stocked and managed sales department, a prosperous used car lot, a clean, well located sales location and sales room in charge of an experienced manager.

XXX

The dealer is expected to maintain a place of business and a sales room and a service station satisfactory to plaintiff. The dealer may not establish a branch sales office or service organization nor move a sales room or service organization without written consent of the plaintiff. The dealer is required to maintain a satisfactory uniform accounting system designated by the plaintiff. Every member of the dealer organization is required to, and does, submit his books, [fol. 100] records and accounts to the plaintiff for examination from time to time. The dealer is required to meet minimum capital requirements specified and determined by the plaintiff. The dealer is required to, and does, maintain

and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally by the plaintiff. The dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. The dealer is required to maintain a service department sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products, and the dealers uniformly agree to buy such special tools as are developed by the plaintiff for the servicing of its new products purchased by retail purchasers, so as to "render proper services to retail purchasers of General Motors products".

XXXI

Plaintiff's activities conducted in the State of Washington include sales training programs, various sales and incentive contests and programs offered and conducted separately or jointly with the dealer and other components of the General Motors organization, national advertising programs and local advertising programs conducted by the plaintiff through other media, joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; on-the-job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of the plaintiff's manufactured products.

[fol. 101]

XXXII

With respect to plaintiff's Chevrolet Class A transactions, involving the sale of Chevrolet trucks and automobiles by the plaintiff to its Chevrolet retail dealers, in addition to the foregoing characteristics of plaintiff's field organization, plaintiff's Chevrolet Division maintained at all times here in question a "branch office" in Seattle consisting of a "Branch Manager" and his secretary, and was supervised by the Portland Zone Manager in Portland. The Seattle branch office was maintained to assist the plaintiff's pur-

chasers (retail dealers) within the area served by the office to give better service on orders and in particular to get faster delivery. Such a service had a direct connection with the making of the sales of Chevrolet automobiles and trucks to the dealers in the foregoing regions of Washington. It did not solicit, receive, process, accept or see orders; it did not make franchise or credit approvals; it did not receive payments, make delveries, or keep books. The Branch Manager had no jurisdiction over and did not establish contact with any other Chevrolet personnel in Washington, and no other personnel reported to, used or worked from his office.

XXXIII

The Court finds that the business activities conducted by the plaintiff within the State of Washington with respect to Chevrolet Class B, Pontiac and Oldsmobile transactions are essentially the same as those for the Chevrolet Class A transactions hereinbefore described, except that (1) neither Pontiac nor Oldsmobile Divisions maintained any office within the State of Washington; (2) the Chevrolet "Branch Office" hereinabove described had no duties with respect to dealers in the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla to whom Chervolet Class B sales were made. The district managers and other personnel who maintain, solicit, [fol. 102] promote and deal with retail Chevrolet dealers in the said nine southern counties of the State of Washington are also assigned dealers in Oregon and lived in Oregon in most instances; (3) except, further, that plaintiff's Pontiac and Oldsmobile Divisions did maintain small stocks of automobiles in public warehouses within the State of Washington during the audit periods here in question as to which taxes were paid; and (4) the field organizations of Pontiac and Oldsmobile Divisions were smaller than the field organization of the Chevrolet Division.

XXXIV

General Motors Parts Division, which has the function of warehousing and shipping parts and accessories for Olds-

mobile, Pontiac and Chevrolet automobiles and trucks, during the audit period here in question maintained a warehouse in Seattle and a warehouse in Portland for supplying of parts and accessories to the Chevrolet, Oldsmobile and Pontiac retail dealers within the State of Washington. The General Motors Parts Division warehouse at Seattle carried "heavy volume items" while the less frequently called for items were carried in the General Motors Parts Division warehouse in Portland. All of plaintiff's retail Chevrolet, Pontiac and Oldsmobile dealers in the State of Washington obtained their supply of parts and accessories for resale and servicing of new and used automobiles during the audit periods here in question from the plaintiff's parts warehouses accordingly.

XXXV

With respect to the "dealer bonus question", the court finds that dealer bonus, which is referred to in Paragraphs VII and VIII of the stipulation dated December 8, 1959, submitted to the court by the parties, provide that dealers shall be paid without condition a specific sum at the end of each calendar year. The total amount of dealer bonuses plus interest involved in these proceedings is $1,036.50 paid to the State of Washington on June 25, 1954. The court [fol. 103] finds that the so-called "dealer bonus" is in fact a deduction from the total purchase price. The dealer had an absolute right to the specified sums according to his contract with the plaintiff. The Court further finds that while automobiles were sold only for cash, certain parts and accessories were sold to dealers on credit and at least one purpose of the "bonus" arrangement was to create a fund for protection of plaintiff on those credit sales. The name of the transaction is not controlling, and the court finds that the "bonus" was not a part of the wholesale sales price, the gross proceeds of which were included in the measure of the tax for the audit periods here in question.

XXXVI

With respect to the "parts return" question, the Court finds that the retail dealers, in accordance with provisions

of the dealer selling agreement, make annual returns of obsolete parts to the plaintiff and were allowed credits therefor. The court finds that such parts returns were in fact re-purchases by the plaintiff, the amount of which are not properly excludable from the gross proceeds of sales of products by the plaintiff to its retail dealers, the gross proceeds of which are included in the tax base here in question.

The parties have agreed that the return of defective parts is a proper deduction and that parts returned within 30 days of purchase are proper deductions according to applicable rule of the Tax Commission.

From the foregoing Findings of Fact, the Court now makes and adopts the following:

[fol. 104] Conclusions of Law

I

Plaintiff was not "engaging within this state in the business of making sales at wholesale" within the meaning of RCW 82.04.270 with respect to the wholesale sales here involved with the exception of those sales which were made by the Chevrolet Motor Division to dealers in Washington within the area in which the Seattle Branch Office of the Chevrolet Portland Zone Office assisted dealers while said branch office was open.

II

In addition, Article I, Section 8, subsection 3, of the Constitution of the United States prohibits defendants fom levying the business and occupation tax on the gross proceeds of the wholesale sales here involved with the exception of those sales made by the Chevrolet Motor Division to dealers within the area in which the Chevrolet branch office in Seattle assisted dealers because such sales are in interstate commerce. *Norton* v. *Department of Revenue*, 340 U.S. 534; *B. F. Goodrich* v. *State*, 38 Wn. (2d) 663.

III

In addition, the due process requirements of Article I, Section 3, of the Constitution of the State of Washington

and of the Fourteenth Amendment to the Constitution of the United States prohibit defendants from levying the business and occupation tax with respect to the wholesale sales here involved (with the exception of those sales made by the Chevrolet Motor Division to dealers within the area in which the Chevrolet branch office in Seattle assisted dealers) because such sales are not within the territorial jurisdiction of the state. *Norton* v. *Department of Revenue,* [fol. 105] 340 U.S. 534; *B. F. Goodrich* v. *State,* 38 Wn. (2d) 663.

IV

The expediting of deliveries which was done by the Branch Office which Chevrolet Division maintained in Seattle was directly connected with the sales made by the Zone Office in Portland. Accordingly, the gross proceeds of the sales made by Chevrolet Division to its dealers in the area in Washington in which the Seattle branch office assisted dealers while it was open are taxable.

V

The amounts attributable to "dealer bonus" are not part of "gross proceeds of sales" within the meaning of RCW 82.04.070 and RCW 82.04.270 and as such are not subject to the Washington business and occupation tax.

VI

In addition, such amounts are "trade discounts" as that term is used in the Excise Tax Return (Form 2406), which constitutes an official rule binding upon defendants, and as such are properly excluded from the "gross proceeds of sales" subject to tax.

VII

The amounts attributable to the return of "defective" parts are not part of "gross proceeds of sales" within the meaning of RCW 82.04.070 and RCW 82.04.270 and as such are not subject to the Washington business and occupation tax.

VIII

In addition, Rule 108 as in effect during the times material to this action is valid and binding upon the defendants and excepts said amounts from tax because the original sales were made upon a "sale and return basis" and were not final when made, the buyer having a contract right to make returns.

[fol. 106]

IX

The amounts attributable to the return of parts within "30 days" after sale are not part of "gross proceeds of sales" within the meaning of RCW 82.04.070 and RCW 82.04.270 and as such are not subject to the Washington business and occupation tax.

X

In addition, Rule 108 as in effect during the times material to this action is valid and binding upon the defendants and excepts said amounts from tax because the original sales were made upon a "sale and return basis" and were not final when made, the buyer having a contract right to make returns.

XI

Notwithstanding the contract right which plaintiff's customers had to return for credit and refund certain parts in one "annual" shipment, such transaction is a "repurchase" and the amounts of the credit or refunds may not be deducted from the gross proceeds of sales subject to tax.

XII

Plaintiff is entitled to judgment against defendant State of Washington for the amounts stipulated in the Stipulation dated December 8, 1959, with respect to taxes measured by the gross proceeds of all sales by its Pontiac, Oldsmobile and General Motors Parts Divisions, and all sales of its Chevrolet Division except to dealers in the area in which the Seattle branch office assisted dealers while that office was open.

XIII

Plaintiff is entitled to judgment against defendant State of Washington for the amounts stipulated in the Stipulation dated December 8, 1959, as attributable to "dealer bonus".

[fol. 107]

XIV

Plaintiff is entitled to judgment against defendant State of Washington for such amounts as are attributable to defendant's failure to allow as deductions from taxable gross proceeds the amount of credits or refunds made with respect to "defective" parts returns and "30-day" parts returns. The Court finds that there were at least some credits or refunds made with respect to each such type of returns and therefore plaintiff is entitled to judgment of $1.00 with respect to each such type of returns.

XV

Plaintiff is entitled to an injunction restraining defendants, and each of them, from assessing against and collecting from plaintiff any business and occupation tax or surtax with respect to the proceeds of transactions, past and future, which are not materially different from the transactions referred to in paragraph XII of these Conclusions of Law.

XVI

Defendants are entitled to judgment of dismissal with respect to the balance of plaintiff's claims being (a) the amounts stipulated in the Stipulation dated December 8, 1959, with respect to sales by the Chevrolet Division to its dealers in the area in which the Seattle branch office assisted dealers while that office was open; (b) the amounts attributable to "annual" parts returns (being the entire amounts attributable to parts returns less the $2.00 referred to in Conclusion XIV; (c) the amounts heretofore refunded to plaintiff by defendant State of Washington; and (d) the amounts conceded by plaintiff to have been properly assessed and paid, all as set forth in the Stipulation dated December 8, 1959.

[fol. 108] XVII

Plaintiff is entitled to judgment against defendant State of Washington for its statutory costs and attorney fees.

Done In Open Court this 16th day of March, 1961.

Charles T. Wright, Judge.

Presented by:

DeWitt Williams, Of Attorneys for Plaintiff.

Copy Received and Notice of Presentation waived:

John W. Riley, Of Attorneys for Defendants.

[fol. 109] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

vs.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS as the TAX COMMISSIONERS OF THE STATE OF WASHINGTON, Defendants.

JUDGMENT—March 16, 1961

This cause came on regularly for trial on December 14, 1959, before the Honorable Charles T. Wright, Judge of the above-entitled court, and continued through December 16, 1959. Plaintiff appeared by DeWitt Williams of Rosling, Williams, Lanza & Kastner, its attorneys, and by Henry M. Hogan and Donald K. Barnes of counsel, and defendants appeared by their attorneys, John W. Riley and Timothy R. Malone, Assistant Attorneys General. Following said trial, counsel submitted briefs prior to final argument, which argument was on October 25, 1960. On December 1, 1960,

the court rendered its Memorandum Opinion and has now entered its Findings of Fact and Conclusions of Law.

Now, Therefore, pursuant to said Findings and Conclusions, it is hereby Ordered, Adjudged, and Decreed as follows:

I

That pursuant to Conclusion XII plaintiff is hereby granted judgment against the State of Washington for refund of taxes, and interest paid and accrued thereon in the sum of $87,253.34 plus interest at the rate of 6% per annum from the date hereof until judgment is satisfied.

[fol. 110]

II

That pursuant to Conclusion XIII plaintiff is hereby granted judgment against the State of Washington for refund of taxes and interest paid and accrued thereon in the sum of $1,245.10 plus interest at the rate of 6% per annum from the date hereof until judgment is satisfied.

III

That pursuant to Conclusion XIV plaintiff is hereby granted judgment against the State of Washington for refund of taxes paid in the sum of $2.00 plus interest at the rate of 6% per annum from the date hereof until judgment is satisfied.

IV

Plaintiff is hereby granted judgment against the State of Washington for its statutory costs and attorneys' fees herein to be taxed.

V

The total of said judgment, exclusive of statutory costs and attorneys' fees herein to be taxed, is the sum of $88,479.44 with interest thereon at the rate of 6% per annum from date hereof until judgment is satisfied.

It Is Further Ordered, Adjudged, and Decreed that plaintiff is hereby granted an injunction against the State of

Washington and the Tax Commission of the State of Washington, and the individual defendants herein in their capacity as such members of the Tax Commission, and each of them, from assessing against and collecting from plaintiff any Business and Occupation Tax and Surtax with respect to the proceeds of transactions, past and future, which are not materially different from the transactions as to which judgment of refund is hereinabove granted pursuant to Conclusion of Law XII.

It Is Further Ordered, Adjudged, and Decreed that plain-
[fol. 111] tiff's claims herein, other than those as to which judgment is hereinabove granted, are hereby dismissed.

Done In Open Court this 16th day of March, 1961.

Charles T. Wright, Judge.

Presented by:

DeWitt Williams, Of Attorneys for Plaintiff.

Copy Received and Notice of Presentation waived:

John W. Riley, Attorney for Defendants.

[fol. 112] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

[Title omitted]

NOTICE OF APPEAL TO SUPREME COURT OF THE STATE OF WASHINGTON—Filed March 16, 1961

To: DeWitt Williams and Donald K. Barnes, Attorneys for Plaintiff herein, and to the Clerk of the Court:

Please Take Notice that the defendants herein being aggrieved because of the Findings of Fact, Conclusions of Law and Judgment entered in this cause against the defendants on the 16th day of March, 1961, and all orders and rulings adverse to the defendants, hereby

appeal to the Supreme Court of the State of Washington from those certain Findings of Fact, Conclusions of Law and Judgment against the defendants entered herein dated the 16th day of March, 1961, and from all rulings and orders adverse to said defendants which occurred during the trial of this case and prior and subsequent thereto.

Dated this 16th day of March, 1961.

John J. O'Connell, Attorney General.

John W. Riley, Deputy Attorney General, Attorneys for Defendants. Office and post office address: Temple of Justice, Olympia, Washington.

[fol. 121] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

[Title omitted]

PLAINTIFF'S NOTICE OF CROSS APPEAL—Filed March 21, 1961

To: The above named defendants, and each of them, and

To: John J. O'Connell, Attorney General and John W. Riley, Deputy Attorney General, attorneys for said defendants, and

To: The Clerk of the above entitled court:

The defendants have filed their Notice of Appeal herein dated March 16, 1961.

The plaintiff, General Motors Corporation, hereby gives notice that it cross appeals to the Supreme Court of the State of Washington from each and every part of the judgment entered herein in the above entitled court on the 16th day of March, 1961 which fails to grant the entire relief prayed for in plaintiff's "Notice of Appeal and Complaint" filed herein except as to the amounts hereto-

fore refunded to plaintiff by defendant, State of Washington, and the amounts conceded by plaintiff to have been properly assessed and paid as set forth in the Stipulation of the parties filed herein dated December 8, 1959. Without limiting the foregoing, plaintiff cross appeals with respect to the following:

(a) The denial of judgment as to the amounts stipulated in the Stipulation dated December 8, 1959 with [fol. 122] respect to sales by the Chevrolet division to its dealers in the area in which the Seattle Branch Office assisted dealers while that office was open (Conclusion of Law XVI),

(b) The denial of judgment as to the amounts attributable to "annual" parts returns (being the entire amounts attributable to parts returns less the $2.00 referred to in Conclusion of Law XIV),

(c) Any orders, rulings, findings of fact and conclusions of law adverse to the plaintiff, and

(d) All rulings and orders adverse to the plaintiff occurring during the trial of this case and prior and subsequent thereto.

Dated this 20th day of March, 1961.

Rosling, Williams, Lanza & Kastner, DeWitt Williams, Henry M. Hogan, Donald K. Barnes, Attorneys and Counsel for Plaintiff.

By DeWitt Williams, 1440 Washington Building, Seattle 1, Washington.

[fol. 126] Supreme Court No. 36001

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

No. 28036

GENERAL MOTORS CORPORATION, a corporation, Plaintiff,

—vs.—

STATE OF WASHINGTON, and E. C. HUNTLEY, DINSMORE TAYLOR, H. DAN BRACKEN, JR., as the TAX COMMISSIONERS OF THE STATE OF WASHINGTON, Defendants.

STATEMENTS OF FACTS—December 14, 15 and 16, 1959

OLYMPIA, WASHINGTON

CERTIFIED

Filed Superior Court, Thurston County, Wash., Jun. 29, 1:50 P.M. '61.

Paul Paulk, Clerk
By W Deputy

PROPOSED

Filed Superior Court, Thurston County, Wash., Jun. 13, 9:54 A.M. '61.

Paul Paulk, Clerk
By vf Deputy

[fol. 127] Affidavit of service by mail (omitted in printing).

[fol. 131] Be It Remembered That heretofore and on, to-wit, the 14th, 15th and 16th days of December, 1959, the above-entitled Cause came regularly on for trial before the Honorable Charles T. Wright, one of the Judges of the Superior Court of the State of Washington, in and for the County of Thurston, sitting without a Jury.

APPEARANCES:

The Plaintiff herein being represented by DeWitt Williams and Donald K. Barnes, Attorneys at Law;

The Defendants herein being represented by John W. Riley, Deputy Attorney General, State of Washington.

Whereupon, the following proceedings were had and done and testimony taken, to-wit:

[fol. 132] (December 14, 1959)

(Whereupon, opening statements were presented by counsel.)

(Whereupon, a Pontiac Job Classification Manual, previously marked for identification as Defendants' Exhibit No. 1, was received in evidence.)

(Whereupon, Dealers' Selling Agreement, previously marked for identification as Defendants' Exhibit No. 2, was received in evidence.)

(Whereupon, portions of Pontiac Office Manual, previously marked for identification as Defendants' Exhibit No. 3, was received in evidence.)

(Whereupon, certain Chevrolet Job Classifications, previously marked for identification as Defendants' Exhibit No. 4, was received in evidence.)

(Whereupon, portions of Chevrolet Office Manual, previously marked for identification as Defendants' Exhibit No. 5, was received in evidence.)

(Whereupon, a Dealer Price List, previously marked for identification as Defendants' Exhibit No. 6, was received in evidence.)

[fol. 133] (December 14, 1959)

Mr. Williams: At this time I ask Your Honor to publish, in accordance with this Stipuluation, Paragraph III, the depositions of Snyder, McCaffrey, Hobson, Greig and Swanson.

The Court: That is what this appears to be (Indicating).

Mr. Williams: That is what is contained in that book, Your Honor, I believe.

The Court: It has been published.

(Recess.)

Mr. Riley: As regards the depositions, Your Honor, I have Mr. Gagliardi here. Probably he could read the answers for us and I can propound the questions.

DEPOSITION OF EDWIN A. SNYDER READ INTO RECORD

"Direct examination.

By Mr. Riley:

Q. You are Mr. Edwin A. Snyder?

A. Correct.

Q. What is your address?

A. My home address, or my business address?

Q. Your business address.

A. 709 Northern Life Tower.

Q. By whom are you employed?

A. I am employed by the General Motors Corporation.

Q. In what capacity?

A. I am the Zone Manager for the Chevrolet Motor Division.

Q. How long have you held that position—how long have [fol. 134] you been in your present position?

A. I have been a Zone Manager since November 1, 1948.

Q. How long have you been Zone Manager here in Seattle?

A. I have been Zone Manager here in Seattle since November 1, 1954.

Q. Prior to becoming a Zone Manager, what was your position—prior to 1948?

A. Prior to 1948 and immediately preceding that, I was Assistant National Sales Promotion Manager in Detroit, Michigan.

Q. With the Chevrolet Motor Division?

A. Still with the Chevrolet Motor Division. Prior to that, I was Regional Organizational Manager in Oakland, California. Prior to that I was Assistant Zone Manager in Salt Lake City, and prior to that I was a Zone Business Manager in Salt Lake City, and a District Manager in the same location.

Q. Were all these with the Chevrolet Motor Division?

A. These were all with the Chevrolet Motor Division. Prior to that I was Assistant Zone Manager for the Motor Accounting Company, which was a subsidiary of General Motors, and a District Representative with Motor Accounting.

Q. A brief reference now to this matter of zone organization. How many zones are there within the Chevrolet Motor Division of the General Motors Corporation?

A. At the present time there are 49, I believe. Excuse me—47. There are 47 zones.

Q. Is this zone organization similar to zone organizations in any of the other divisions of General Motors with [fol. 135] which you are familiar?

A. Essentially and fundamentally it is—yes.

Q. The zone of which you are in charge, the offices of which are here in Seattle, is comprised of what territory?

A. Well, it is comprised of the State of Washington, excluding the nine southern counties of the state, and we have what is known as the six northern counties in the State of Idaho, plus the new State of Alaska.

Q. Has this zone organization changed since you have been here?

A. Just how do you mean that?

Q. In other words, have the geographical limits of the present zone here changed since you have become general manager?

A. No. They have been the same since I have been here. There has been no change.

Q. When was the last time that the existing zone boundaries were changed, or the boundaries; if you know, for the Seattle Zone office?

A. Well, this zone was originally opened on January 1, 1954, and it then had the same geographical limitations

as it has now. Prior to the time that it was a zone—many years before—I do not recall what the geographical limitations were.

Q. Where are your present offices located for your zone?

A. Our zone offices are located in the Northern Life Tower, on the seventh floor—709.

Q. Do you have any other offices in the State of Washington?

A. No. That is the only office we maintain.

[fol. 136] Q. How many employees do you have attached to this office at the present time?

A. Working out of the office's headquarters, we have 38 people.

Q. Are there any other officials, or any other employees of your division who are located within the State of Washington, or who are residents in the State of Washington, but do not office with you?

A. They have residences in other locations in Washington.

However, all their business is cleared through this office here in Seattle.

Q. Are all of those people included in this figure of 38 that you have given me?

A. Yes, they are all included in this figure of 38.

Q. Is this office organization that you have here now, as far as you know, the same in size, with the same number of employees as it was back in 1948?

A. No.

Mr. Williams: I just want to clarify that. He said that this zone office was opened in 1954—the zone office—so its beginning would be then. He didn't say that it was in 1948. I just want to clarify that.

Mr. Riley: All right.

By Mr. Riley:

Q. There was an office here prior to the establishment of the zone office in 1954, wasn't there?

A. To my knowledge there was.

Q. Do you know how long that office was situated here, or how far back did that office date?

A. Not exactly. I believe it was here from about 1950 up [fol. 137] to 1954, at the time that the zone office was officially opened.

Q. Was it in the same physical location?

A. No, it was not. It was in another building, and it was very limited.

Q. As an aside, these premises are leased, I take it?

A. Yes, they are leased.

Q. They are leased by what organization, or by whom?

A. They are leased by the General Motors Corporation, through the Argonaut Realty Division.

Q. Is this a non-incorporated division?

A. No. I do not know the corporate set-up. I am not sure. I think they are just a division, just like we are now. However, I am not sure of that. I think they are a division just as we are now.

Mr. Williams: We will stipulate that they are a division of the General Motors, and its name is the Argonaut Realty Division.

Mr. Riley: What is the name of that, again?

Mr. Barnes: The Argonaut Realty Division.

By Mr. Riley:

Q. With respect to the office furnishings, situated in the offices here, are these owned or leased?

A. They are owned by General Motors.

Q. By General Motors?

A. Chevrolet Motor Division.

Q. Do you know whether personal property taxes are paid on this property or not?

A. As far as I know, I am sure that they are—yes.

Q. Telephone listings at your existing offices, how are [fol. 138] they listed in the telephone directory?

A. We are listed in the telephone directory as Chevrolet Motor Division, General Motors Corporation.

Q. Is that one listing, or two?

A. We are only in there as Chevrolet Motor Division, as I recall.

Q. Are there any warehouses, or plants, or facilities situated in the State of Washington which come within the scope of your organization?

A. There is one small space that we have for storage purposes of properties located here in the City of Seattle. It is a storage space that we rent. That is for the storage of sales properties—training properties.

Q. Do you have cognizance within your zone organization, of the sale of parts of Chevrolet automobiles, or other General Motors Products?

A. We handle that phase of our business with our dealers, yes.

Q. Is there a parts warehouse situated in the State of Washington?

A. There is not, no.

Q. Now, then, I would like to ask you to state just generally for the record, but in as much detail as you want, to begin with, the exact duties and responsibilities of your present position as Zone Manager for this region, or for this zone—excuse me.

A. Well, my responsibilities as Zone Manager generally are to secure and maintain a quality dealer organization of Chevrolet dealers; to administer and promote programs, [fol. 139] plans and procedures that will cause that dealer organization to give Chevrolet the best possible business representation in this area.

Q. Are your responsibilities as a Zone Manager stated in any printed or written form in any personnel manual?

A. Yes, they are, and I have given a copy of the same to Mr. Williams.

Q. By whom are those promulgated?

A. Those are developed by the General Motors Corporation as well as the Chevrolet Motor Division. They are standard.

Q. You say that they are standard?

A. Yes.

Q. Are they standard to other divisions—within other divisions of General Motors?

A. The particular reference there, they are standard with reference to the Chevrolet Motor Division as far as I know.

Q. Could you give me the exact title of this document which states in writing your duties as Zone Manager?

A. I cannot give it. However, I can secure that title for you. It is on the front of the book. I do not have the exact title. Now, I do not know what the exact title of it is.

Q. Mr. Williams, you say, has a copy?

A. Yes."

Mr. Riley: At this point, Your Honor, and Counsel, I would like to call the Court's attention and ask counsel if the document being referred to there was the Chevrolet Zone Office Manual, pertinent portions of which are now in [fol. 140] the record as Plaintiffs' Exhibit No. 5, also Stipulated Exhibit No. 5 as referred to in the Facts Stipulation?

Mr. Williams: Excuse me just a minute.

Mr. Riley: That is Line 3, Page 10.

Mr. Williams: Well, I would stipulate that the job description referred to at that point is Stipulation Exhibit—what was the number again?

Mr. Riley: Excuse me. That is the Chevrolet Job Classification Manual, portions of which are included in Plaintiffs' Exhibit No. 4, which is also Stipulated Exhibit No. 4, referred to in the Facts Stipulation.

Mr. Williams: Yes, that is correct. I just wanted to correct you on the name, not that it is material.

Mr. Riley: I am deleting Lines 4 through 12 there, if there be no objection of counsel. It is colloquy of counsel. Essentially it has already been covered.

Mr. Williams: That is right.

Mr. Riley: Line 13.

"By Mr. Riley:

Q. Your immediate supervising senior within the Chevrolet Division of General Motors Corporation, who is he, and what is his title?

A. My immediate supervisor is Mr. Roy M. Cash. His title is Regional Manager, with headquarters in Oakland, California.

Q. With respect to the regions, can you tell how many [fol. 141] regions there are in the Chevrolet Motor Division at the present time?

A. There are ten regions at the present time."

Mr. Riley: At this juncture—I am at Line 22, Page 10—I would propose to delete from that point to Line 24 of Page 11, if there be no objection of counsel.

Mr. Williams: Your Honor, we would like to include it in chronological order. It is a recitation of the setup of the organization, and so forth, and should be included. We stipulated that this deposition may be read in evidence, and there being no real objection to this, basic legal objection, it should be included. We would like to have it read.

The Court: You may proceed.

Mr. Riley: All right. The question at Line 22 is then:

"Q. Then who would be your next assistant within your zone organization in case of your absence or illness, and who would have the responsibility of fulfilling your duties and responsibilities?

A. The next man in my organization here is Mr. J. C. Faust. His title is Assistant Zone Manager.

Q. Now, would you tell me, Mr. Snyder, which reports you are required to submit to Mr. Cash, or to the regional offices from within the State of Washington?

A. Well, that is a rather broad question. The types of reports are naturally of a character that have to do with our business, which, again, relate to my responsibilities as to [fol. 142] such matters I may be doing, or have in mind with reference to maintaining our dealer organization, and such phases of our operation of myself that Mr. Cash would like to know how we are progressing, with reference to the conduct of our business with our dealers. Those reports cover a pretty wide number of subjects.

Q. Are these reports described and set up in manuals, or are they in written form required to be submitted periodically, speaking generally?

A. Some of the reports are on a prepared form. Much of the reports are in the form of letters.

Q. Are the prepared forms described in any particular publication or personnel manual, or organization manual?

A. Yes, they are. I might explain that many of the reports going to the region are prepared by people in my organization, that go to other people in the organization.

Q. I would like to have you refer me to the exact form of publication that describes the printed reports you are re-

quired to submit periodically, or that your subordinates are required to submit.

A. The best source of finding that would possibly be in the Zone Office Manual, which would detail the different reports that are required of a zone, to be filed with a region, or any other offices."

Mr. Riley: Your Honor, I would like to refer Your Honor to the Zone Office Manual for Chevrolet, Exhibit No. 5, which is Stipulated Exhibit No. 5 as referred to in the Facts Stipulation.

"Q. Would the Zone Manual contain copies of the forms [fol. 143] that you are required to submit?

A. In some cases yes, and in other cases no."

Mr. Riley: Lines 11 to 13 is colloquy of counsel; is it all right to delete that?

Mr. Williams: Yes.

Mr. Riley: Line 14.

"By Mr. Riley:

Q. Speaking generally, you have been Zone Manager for some time now in various zones. The general format of these reports have been essentially similar in your experience during the last ten years?

A. In practice, yes, I would say so.

Q. May I ask you, how is the performance of a Zone Office judged by a Regional Office, or by your superiors within the organization?

A. Well, there are several factors that a zone is judged on, among them being, first, the amount of business that the dealers within the zone do in relation to the automobile market, both on passenger cars, as well as on trucks, and the amount of profit that the dealer organization within that zone obtains as a result of doing that kind of a sales job. Those are the basic fundamental things that a zone is judged on.

There are many others from the standpoint of internal operation, such as operating within the budget, development of our own organization, and things of that kind.

Q. To back up a little bit here, you indicated earlier that generally your duties were to secure and maintain a quality

dealer organization, and to administer programs and plans. Now, just to generalize, plans and programs are promul-
[fol. 144] gated nationally, are they?

A. In many cases, yes, but in some cases they are developed in the region, and we even develop some at our own zone level.

Q. Are these general sales programs promotional?

A. They are promotional in character, to help a dealer to develop the best results out of his business. They are more in the nature of an assist to the dealer.

Q. Do you have competition among your various zone offices or zone organizations within your division of the General Motors Corporation?

A. I would say to the same degree as perhaps in any large organization. We always like to have a good record for our zone.

Q. Is that based principally on your gross sales within the zone?

A. Not entirely. That, of course, as I have illustrated, has a big part in the ranking, but there are many other things, for instance, improvement in the dealers, and improvement of their operations from the standpoint of the manner in which and the success with which the program is accepted and carried out, or whatever it may be.

Q. Don't you consider your principal objective as a Zone Manager to be to increase your gross volume of sales in your zone at the retail level?

A. Well, it is designed, or its main function is, of course, to maintain within the industry a position comparable with what the division expects to obtain in business.

Q. Well, who fixes the amount that your division expects
[fol. 145] you to obtain? In other words, who fixes the level of achievement that your zone is expected to obtain?

A. There are objectives set up, as in any organization, that are established in some cases by our central office in Detroit, and in other cases they are established by the region, and in other cases I even establish some—goals that we strive to reach.

Q. Can you give me an example of the goals that you might establish at the zone level?

A. Having been given an objective from perhaps the central office, or the region, it then becomes my duty to take and break that down into its component parts by districts, and in some cases even by dealers, assigning part of that objective or all of the objective to each one of the individuals, if we are going to accomplish that objective.

Q. I take it that involves objectives in sales to meet?

A. Oh, yes. There are sales objectives to meet, yes.

Q. To pass on for a moment to another general area, are the activities of your organization—of your zone organization—of the Chevrolet Motor Division, coordinated with those of other subsidiary organizations of the General Motors Corporation as a whole?

A. I don't quite understand your question. In what way?

Q. Well, to re-state the question, what other subsidiaries of General Motors Corporation do you deal with from time to time? You mentioned one, the Argonaut Company, or Real Estate Division.

A. We have no other direct contact on zone level with any other division that I can recall.

[fol. 146] Q. I had one in mind specifically. I am thinking of Motors Holding Division—the function of financing dealers at the local level.

A. Yes, I overlooked that. We do have in this particular zone only one case of that type. We have only one dealer who is availing himself of that type of financing, and in that connection we do have a contact with Motors Holding. That is correct. I had forgotten that.

Q. Are all of your dealers, or the dealers within your zone organization, confined to just the Chevrolet line, or do they have double franchises? I am thinking of GMC trucks.

A. Yes. We have a number of dealers that are dual in other lines of General Motors, and we have a few cases where they are even dual in lines other than General Motors.

Q. If a Chevrolet dealer desires to acquire a dual line, either of another General Motors Product, or, we will say, a foreign line or make, from whom would he obtain permission to undertake this line?

A. Well, if he were a Chevrolet dealer, and say for example he would want to dual with Oldsmobile, the first

thing he would have to do, he would have to make an approach to the Oldsmobile Division, to find out if he could get Oldsmobile, and practically simultaneously he would also contact our zone office, and me, to find out whether we would be agreeable to such an arrangement.

Then the approval for the dual, or the submission of the proposal would be accepted by me, and I would pass that on to my Regional Manager for transmission to the central office, and if they approved, why the man would be [fol. 147] granted the dual line. I would be the initial one that he would come to to obtain that permission."

Mr. Riley: I propose to delete Lines 1 through 10 on Page 17, but—

Mr. Williams: (Interposing) We would like to include that, Your Honor, for the same reason.

The Court: You may proceed.

"Q. Regarding flooring of automobiles, of course I understand that General Motors Acceptance Corporation is a separate corporation. Do you have a policy with respect to your dealers as far as financing or flooring of automobiles is concerned, within yourself, or within your zone?

A. We have no policy whatsoever. In fact, we have many outside banks and other finance companies that the dealers floor their cars through, and we make absolutely no decision as to how they do it, just so the merchandise is paid for.

Q. Now, a moment ago you indicated with respect to reports that are required to be submitted from the zone office of which you are in charge, that some of your subordinates make out their reports to other agencies of the General Motors family, and I would like to know who those individuals would be, or what their capacity is?

A. Well, I can explain it in this way—

Mr. Williams: (Interposing) I object to the form of the question. Just for the sake of accuracy, as I understood it, and you correct me if I am wrong, I understood with reference to other offices in the Chevrolet Division. Is that what you mean, Mr. Snyder?

[fol. 148] The Witness: That is correct.

Mr. Williams: I understand that it was with reference to other offices in the Chevrolet Division.

The Witness: There are subordinates in my organization who submit reports to subordinates in either the regional or central office of the same division.

By Mr. Riley:

Q. Would that be, for instance, parts representatives?

A. Yes. That is, we have a duplication of the parts personnel in the regional office as well as in the central office, and a Zone Parts & Accessories Manager would render a report in many cases to the Regional Parts & Accessories Manager, and in some cases he might even render a report to the National Parts & Accessories Merchandise Department. The same format exists at the regional level, and the same exists in the central office as we have here in the zone.

Q. As far as the regional organization is concerned, the regional office reports to the one national office, is that right?

A. In Detroit, yes.

Q. And the zone offices to which you refer, or the zone organizations, are they all based, or housed—excuse me, your district offices—are your district offices based within the zone offices?

A. They clear all of their business transactions through a zone. The districts within a zone clear all of their business through their respective zone office, yes."

Mr. Riley: May I ask that we delete Lines 18 and 19, and reread the question, that is, only the words commencing [fol. 149] on Page 20: "Are your district offices based within the zone offices?"?

Mr. Williams: Excuse me, Your Honor, just a moment.

Would you state that again?

Mr. Riley: The question at Line 18 through 21 is very confusing. I would like to delete all except the words: "Are your district offices based within the zone offices?"

Mr. Williams: Yes.

Mr. Riley: Then the answer commencing on Line 22 is:

"A. They clear all of their business transactions through a zone. The districts within a zone clear all of their business through their respective zone office, yes.

Q. In this zone, the Washington zone or Seattle zone, what is your correct title?

A. The Seattle zone."

Mr. Riley: Delete Lines 3 and 4 at Page 19?

Mr. Williams: That is all right.

"Q. In the Seattle zone how many districts do you have?

A. We have nine districts.

Q. And how are these nine districts managed? Do they maintain their own office?

A. There is no office in any of the districts. The men receive their mail at their homes, and they have no office in their respective locations."

The Court: We will be at recess until 10:00 o'clock tomor-
[fol. 150] row morning.

(Recess.)

[fol. 151] (December 15, 1959)

Mr. Riley: Your Honor, we were in the process yesterday of publishing depositions, and at this point I thought it would be well to clarify for the record just at which juncture we are—we did launch right into the publication of them—whether we are in the Defendants' case or the Plaintiff's case. As I understand it we are in the presentation of the Defendants' case at this time.

Or I am assuming that, unless there is some difference of opinion, Counsel. I thought we should have that clear for the record just where we are in these proceedings.

Mr. Williams: As I see it, Your Honor, we are in the process of presenting to Your Honor evidence which has been stipulated should be before Your Honor, and I don't know if it makes any difference at which state we are in. The evidence has been offered in connection with what has been agreed between the parties would be the stipulated facts before Your Honor. I don't know that it makes any technical difference, unless counsel can point it out, as to what stage we are in at the moment. We have agreed this evidence should be before Your Honor at this time.

Mr. Riley: I may be guilty of a slight procedural error here on my part, Your Honor. Paragraph III of the so-

called Facts Stipulation states that "The field organizations of Chevrolet, Pontiac and Oldsmobile Divisions are simi-
[fol. 152] lar in all material respects. The differences between the Chevrolet organization and the others, and the operation of General Motors Parts Division, are hereinafter described, following the description of the Pontiac organization, from which Oldsmobile does not differ significantly, and in depositions of Edwin A. Snyder, Edward A. McCaffrey, Stanley C. Hobson, George A. Greig, William S. Ross, John Reeves an John H. Swanson, whose depositions were taken on October 6 and 8, 1959, and November 4, 1959, which may be published as evidence in this action pursuant to the terms of the stipulation of counsel set forth in said depositions."

Now, the stipulation of counsel, of course, speaks for itself, and it is also obvious I took these depositions of these individuals as adverse witnesses, or witnesses adverse to the State, because they are obviously executives of General Motors Corporations, and the several divisions whose transactions are involved here, and this will become more material as we get along, because there are certain statements by some of these gentlemen that I feel to be inconsistent with certain parts of the other stipulations and certain portions of the exhibits which have been and/or will be introduced during the course of the trial.

I, of course, have moved. I am not objecting to the publication of the depositions that we are now involved in, but I thought it should be made clear that examinations of witnesses by me who are adverse to me would permit
[fol. 153] me to lead them, whereas it would not permit counsel to lead them. I am just a little bit concerned about that. It seems to me we are presently in the Defendants' case, and that these depositions are being published as part of our case, and as we come to portions which I deem to be inconsistent I certainly shouldn't be bound by them or by facts which I deem to be inconsistent with other parts of the published record as we go along.

Mr. Williams: Well, we made the stipulation, Your Honor, relying on its terms and that they would be published as evidence in this case and as part of the agreed facts coming before Your Honor.

Your Honor will make your own conclusion, I presume, as to the relationship between all of the evidence, but I think the evidence should go in exactly as it was stipulated. We are not objecting to the form of the question. I notice he mentioned leading questions, and so forth, but it was stipulated that these depositions would be read to Your Honor. Of course—

Mr. Riley: (Interposing) Which may be published and, of course, I am moving the publication of the first five depositions.

Mr. Williams: Yes, we jointly moved for them. We moved for them, too. I offered them in connection with the offer of the stipulation.

The Court: I can't see there is any serious matter in dispute.

Mr. Riley: I would like to ask permission just to make [fol. 154] one other brief explanation of a couple of matters before proceeding with the publication of the deposition we were involved in yesterday, if I might.

The Court: I assume you want the publication of these other depositions that arrived, too, don't you?

Mr. Williams: Yes.

Mr. Riley: Yes, Your Honor. We picked those up this morning and delivered them to the Clerk from the bus station, and—

Mr. Williams: (Interposing) They weren't included in what I said yesterday, only because they weren't physically present, although we stipulated copies could be used if they didn't arrive, but they should be published, too, for reading in evidence.

The Court: Very well.

Mr. Riley: Your Honor, as an assistance to the Court—

Mr. Williams: (Interposing) Did you say they were published, Your Honor?

Excuse me, Mr. Riley.

The Court: Yes.

Mr. Williams: Pardon me, Mr. Riley.

Mr. Riley: May I have this marked for identification as an exhibit?

Before we pursue the depositions, if the Court please, I have asked to be marked for identification, and I would like to offer, what is marked and identified as a recapitulation of Plaintiff's claims for refund, which I have taken the [fol. 155] liberty of preparing from the Numbers Stipulation, and I felt it would be helpful to the Court and to all concerned if I might have just a minute to explain this so as we go through the course of these depositions we will be able to identify the testimony with the transactions of the several categories.

I would like to offer Defendants' Exhibit No. 7 for that purpose at this time.

Mr. Williams: I have a couple of comments in connection, Your Honor, with the offered exhibit, which I understand counsel has offered for illustrative purposes only.

Isn't that right?

Mr. Riley: That is right, and as a recapitulation of the Numbers Stipulation itself, which, of course, speaks for itself.

Mr. Williams: I just want to make it clear to Your Honor and for the record that of this total under the Chevrolet of $353,207.61, that not all of that is in issue, for two reasons; one, you will notice in the first column the figure $44,236.20. Three hundred and fifty-three thousand would be reduced by that amount, because it has either been refunded or is not in issue. Secondly, as shown in the Numbers Stipulation, Paragraph V and Paragraph VI, there are two items in the Penalties Section which have been denominated interest, I believe, in the Numbers Stipulation, totaling $5,694.18, which should be deducted from that $19,518.33, further reducing the total.

[fol. 156] The Court: Five thousand six hundred ninety-four dollars and eighteen cents?

Mr. Williams: And those are found in Paragraphs V and VI. I mention that, Your Honor, not because those matters are particularly important at this stage of the case, but since the exhibit is offered for illustrative purposes I think it should be further pointed out that those items should be considered in connection with it, and considering the purpose of it, and with that explanation we have no objection to the exhibit.

The Court: It may be admitted.

(Whereupon, a Recapitulation of Plaintiff's Claims for Refund, previously marked for identification as Defendants' Exhibit No. 7, was received in evidence.)

Mr. Riley: Counsel is correct. The amount of $5,694.18 was refunded, as indicated in Paragraphs V and VI of the Numbers Stipulation, leaving the amounts, total amount in dispute, the amount which I referred to yesterday, three hundred and three thousand dollars and—

Mr. Williams: (Interposing) We get two seventy-seven twenty-three.

Mr. Riley: Two seventy-seven twenty-three.

I want to go through this, Your Honor, and now make a reference to Defendants' Exhibit No. 7, which I understand has now been admitted, in view of the comments made here, so that we might know just exactly the proportion of the Chevrolet as against Oldsmobile and Pontiac, and in turn the proportion of the automobile transactions [fol. 157] as against parts.

Chevrolet, of course, represents the lion's share of the transactions included in the total of the tax base involved in this action, and the first amount that I have indicated in Defendants' Exhibit No. 7 is referred to in the Numbers Stipulation at Paragraph IX, and these represent Business and Occupation Tax, wholesaling and parts sold to Washington dealers, and the description of those amounts is contained in Paragraph IX. They are further referred to in the Facts Stipulation.

The largest item of the Chevrolet Automobile transactions involved here is the second sum of $156,594.75, representing sales of cars to Chevrolet dealers in all of the counties in the State of Washington during this audit period, except the nine southern counties, and you will recall that the Facts Stipulation and Numbers Stipulation points out that the nine southern counties are included in so-called districts which overlap the Oregon-Washington boundary. These counties, the tax involved is $13,976.33, which is the tax applied to the gross volume of sales of automobiles to dealers located in the nine southern counties, and in each of these categories I have referred Your Honor, for the

convenience of the Court, to the appropriate paragraph again in the Numbers Stipulation, the right-hand column of this exhibit.

Now, the amounts refunded or conceded, as indicated in Paragraphs V and VI, are the sum of $44,236.20, plus the amount which counsel just referred to, five thousand six [fol. 158] hundred ninety-four dollars and some cents, which reduces the total amount in dispute, as I indicated earlier, to three hundred three thousand dollars.

The last item under Chevrolet before the first subtotal was $1,393.82, representing a very small portion of the total amount here, which are so-called dealers bonus and parts returns. Now, the dealers bonus and parts returns are again discussed at the bottom of the exhibit, and I will mention those a little later.

Then there is one other year involved for Chevrolet automobile transactions, and that is for the period of January, '50, to June, '51, and it is discussed in Paragraphs XI, XII and XIII, as the exhibit indicates, of the Numbers Stipulation, and it represents a tax of $71,207.35.

Now, the difference between the automobile transactions here and the automobile transactions for this audit period is simply that for this audit period—and our evidence will be shown later in the day—this amount was paid prior to assessment, and by our view of what the evidence will show it had been collected from dealers in the form of a so-called Washington handling charge, which was an added charge to the invoice price or the list price of the automobile, which, if the Court were so inclined, that these automobile transactions of all categories were not properly included in the tax base, would raise another question here, because the Plaintiff would have failed to show damages, by our view of the case, because they have actually collected it [fol. 159] from other persons, and there is ample case authority to that effect.

Then finally to put Oldsmobile and Pontiac in their proper perspective we find that Oldsmobile, discussed in Paragraphs XIV and XV of the Numbers Stipulation, has a tax assessed of $16,844.75 for a 1-year period. They have a much briefer audit period involved than what is involved in Chevrolet, and similarly, almost the same amount, one

thousand less, we have the Pontiac assessment, taxes paid of $15,876.80, discussed in Paragraphs XVI and XVII of the Numbers Stipulation.

Now, I have referred also in the left-hand column, Your Honor, not only to the audit period, but for the Court's convenience to the Commission orders involved, and there are four Commission orders and one memorandum involved for each of these transactions. Exhibits A and B attached to the Numbers Stipulation refer to these amounts involved here, the audit period of Chevrolet Division from July, '51, to January of '54.

Exhibit C deals with the audit period of January, '50, to June, '51, for Chevrolet.

Exhibit D, Oldsmobile, and Exhibit E for Pontiac. I hope that it will be helpful.

Now, one last word before closing, the matter of dealers' bonus and parts return. I believe it is a very simple matter of construction of the terms of the Exhibit No. 5 attached to the Facts Stipulation, and the Dealers' Selling Agreement, pertinent portions of which are included in the Paragraph VIII and Paragraph X of the Numbers Stipulation, or XI and XII of the Facts Stipulation, XI and XII [fol. 160] of the Facts Stipulation rather, in turn discuss the problem of dealers' bonus and parts return in that order, Your Honor, and while there is a very small amount involved, not to confuse them with the other amounts in the preceding, assuming that the Court finds that the State Tax Commission's position is correct with respect to both of these transactions, then whether or not they may nevertheless deduct from the gross sales the measure of the tax, the amount of dealer bonus that they paid to these dealers pursuant to the dealers' selling agreements, and I believe it is simply a matter of construing that contract and the statute involved.

Similarly as to parts returns, the State's position with respect to those two items, Your Honor, is simply that the dealer bonus is a cost of doing business and there is no statutory authority deducting it from the gross sales price of the automobiles. They pay this out at the end of the year, and similarly, after parts have been sold the dealer

has a right to make certain returns of parts during the course of the year after the sale has been accomplished, and it is our position, and with regard to the pertinent statutes, and notwithstanding the contractual provision, that this is not a recision but it is merely a repurchase, and that it cannot be deducted from the original transaction and, of course, in view of the amounts involved those are obviously very minor points here, but I thought that would be helpful to Your Honor as we went through this testimony.

[fol. 161] Mr. Williams: Could I have just a moment, Your Honor, in connection with his statement?

The Court: Certainly.

I think the record already shows it, but Defendants' Exhibit No. 7 has been admitted without objection for illustrative purposes.

Mr. Williams: Counsel, I think you will probably want to make a correction on Exhibit No. 7, and it may be done. Under the first item, and this is January 1, 1949, instead of July, 1951; isn't that correct? The audit period under Chevrolet. Do you recall that? Just for the sake of accuracy, as long as we were trying to put this in for illustrative purposes, I thought it should be corrected.

Mr. Riley: I assume we have that involved in the Numbers Stipulation, or is it the Facts Stipulation?

Mr. Williams: These figures are within that period there.

Mr. Riley: Parts only?

Mr. Williams: No; the whole thing.

I want to speak for the record here with respect to the first group of figures, having to do with Chevrolet, and which, for identification, a total of $229,760.38 is stated. The audit period there is, as set forth in the Facts Stipulation, January 1, 1949, through June 30, 1953, rather than the dates stated on the exhibit, and if counsel wants to consider my statement for a moment he may wish to correct that.

Mr. Riley: I think that would be an appropriate correc-
[fol. 162] tion, Your Honor. The dates would then conform to the Facts Stipulation, and that is appropriate I think.

Mr. Williams: If counsel wishes to make that change on Exhibit No. 7 it could be done now, with the Court's permission.

The Court: Very well.

Mr. Riley: Well then, let the record show that I corrected in ink Defendants' Exhibit No. 7 and showing that the audit periods involved in the first categories were January 1, 1949, to June 30, 1953, instead of July, '51, to January 1, '54.

Now, if we may proceed with the reading of the deposition, Your Honor. I will read the question preceding Line 9, beginning at Line 7.

"Q. And how are these nine districts managed? Do they maintain their own office?

A. There is no office in any of the districts. The men receive their mail at their homes, and they have no office in their respective locations.

Q. I see. Now, going back to the Parts & Accessories Manager within your zone office, what is the name of the person who presently holds that title?

A. Mr. Earl W. Perkins.

Q. How long has he been Parts & Accessories Manager for the Seattle zone?

A. Since its inception—since January 1, 1954.

Q. Would you describe generally his duties and responsibilities as Parts & Accessories Manager?

[fol. 163] A. Well, he heads up the Parts & Accessories merchandising activities that we have in Chevrolet, from the standpoint of administering and promoting such programs as we have to assist our dealers in the merchandising of their Parts & Accessories inventories.

He counsels with dealers on the personnel and on the stock that they should have in relation to their respective sales volume, and, as I say, assists them in all or any programs that will assist them to sell Parts & Accessories.

Q. Now, is there also, aside from being a part of your zone organization, such a thing as a Parts Division of the Chevrolet Division of General Motors?

A. There is a General Motors Parts Division. I am not quite sure exactly in the corporate set-up just how that

works. There is a General Motors Parts Division which handles all parts of the corporation. However, insofar as we are concerned in Chevrolet, we consider it as part of our division—at least that is the way that I have always looked at it. Now, I may be wrong on it.

Q. Is there a job description or mission, so to speak, of the Parts & Accessories Manager of the zone office?

A. Yes, there is.

Q. Would that be described in the Job Manual?

A. Yes."

Mr. Riley: At this point, Your Honor, I would like to refer to Exhibit No. 4, Plaintiff's Exhibit No. 4, which is also Stipulation Exhibit No. 4 referred to in the Facts Stipulation, and which contains the job classification man-
[fol. 164] ual description of the Parts and Service Manager and Service and Parts Representatives of the Chevrolet Divisions involved here, and with leave of the Court I would like to quote just the parts I think are pertinent here, and it includes: "His responsibility is for the effectiveness of the service function in the zone area. His duties include the hiring, training, and supervision of Zone Service Representatives; the education of dealers' service organizations in approved methods through schools and other contacts; promotion of divisional policies as to methods of obtaining customer business and service; co-operating with the dealer in the handling of difficult customer complaints which the dealer has been unable to satisfy. The qualifications of this man are a thorough mechanical training, ability to supervise men, and personality to meet and talk with the public."

An additional part is 6-S-72 at the bottom of Page No. 2 of that exhibit, Service and/or Parts Representative, and it says: "Participates in the duties and responsibilities of Service, Parts and Service, or Service and Mechanical Manager (Zone or Branch) (7-S-1), and works under his supervision. His duties include the education of dealers' and/or distributors' parts and service personnel in approved methods through schools and other contacts; promotion of Divisional policies as to methods of obtaining customer business and service; cooperating with the dealer and/or distributor in the handling of difficult customer

complaints which the dealer and/or distributor has been unable to satisfy. The qualifications of this man are a [fol. 165] thorough product and/or mechanical training and also personality to meet and talk with the public."

Now, back to Line 19, Page 20.

"Q. Would that be described in the Job Manual?

A. Yes.

Q. Would you state what you consider the mission and duties of the Parts & Accessories Manager to be?

A. I think I mentioned them just a while ago, and I will repeat it again. The mission is to administer and to promote such programs and procedures with our dealer organization as will assist them in the development of their Parts & Accessories business."

Mr. Riley: I will delete Lines 3 through 10, if the Court please, on condition that I might now identify the exhibit which Mr. Williams mentioned in the deposition, and I will quote: "Mr. Williams: We will stipulate that the direct dealer selling program which Mr. Riley has here in his hand, which I will initial for identification, can be referred to without making it an exhibit at this time."

I have a Direct Dealer Selling Agreement, which I will ask be marked as Defendants' Exhibit No. S, I believe, for identification.

Counsel, I think you will find your initials in there.

Mr. Williams: Yes.

Could you bear with us just a moment, Your Honor, on this question?

[fol. 166] There will be no objection; just wanted to check something.

Mr. Riley: At this time I then offer Defendants' Exhibit No. S, Your Honor.

The Court: It may be admitted.

(Whereupon, a Direct Dealer Selling Agreement, previously marked for identification as Defendants' Exhibit No. S, was received in evidence.)

Mr. Riley: Parenthetically I might observe, Your Honor, this is quite similar in most details to the Exhibit No. 2, Plaintiff's Exhibit No. 2, which is also a Stipulated Ex-

hibit No. 2 referred to in the Facts Stipulation, but I offer this one at this time because it does involve Chevrolet, whereas the other involved Pontiac, and because I have quoted from it at length in the deposition as we proceed through it.

Now, back to Page 21, Line 10.

"By Mr. Riley:

Q. Referring to this document, identified as 'Direct Dealer Selling Agreement,' promulgated by the Chevrolet Division of General Motors Corporation, on page 11, referring to paragraph 21-C it states: 'Dealer will carry in stock at all times during the life of this Agreement, an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.'

My question is, what standards are used, or how is 'an adequate number' determined and administered with respect to your dealers?

[fol. 167] A. Well, much of that is handled from the ordering from itself. We refer to it as the parts order pad, and also the accessories order pad, and the dealer carries in inventory a quantity of parts in relation to the previous period of sales. It is all based on a previous rate of sales, by item. We call it the 'Balanced Parts Plan'.

Q. It is stated here in paragraph 21-C of the Direct Dealer Selling Agreement that I referred to a moment ago, that the dealer will carry in stock at all times an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.

Would you consider that to be a part of your overall sales effort and public relations program?

A. We always foster rendering good service to the car owners and people who drive the Chevrolet product.—yes.

Q. And do you think that that is necessary, to foster not only good public relations, but also to increase sales by providing better service to Chevrolet owners?

A. It is just like the chicken and the egg. We sort of feel—yes, it will unquestionably be profitable to the dealer.

but at the same time it will be rendering a service to the people who own and drive our product. I would say that it has a dual purpose.

Q. And now, the reports that the Parts & Accessories Manager would be required to submit, are some of those also keyed to sales volume of parts?

A. Well, many of the figures that appear on the reports might be used in that way. However, a lot of the reports [fol. 168] are not for that purpose. Principally, most of it is the obtaining of information so that we can warehouse the proper kind of parts for the dealers in our territories. The rate of sales on certain items varies in certain locations of this country, and many of our reports are for maintaining what we call a balanced inventory, not only in the dealers' hands, but also in our own warehouse.

Q. How is the performance of your Parts & Accessories Manager, and his subordinates, judged with respect to the Parts & Accessories Managers of other zones in the Chevrolet organization?

A. Well, in the main it is based upon the volume of business that the zone does, in relation to the amount of inventory that the dealer organization has invested.

Q. And I suppose also turnover, is that correct?

A. Turnover is one of the very important factors, yes.

Q. How many employees does your Parts & Accessories Manager have, or how many people does he have working with you in your zone?

A. He has an Assistant Parts & Accessories Manager, and he has what is known as a Parts Analyzation Clerk, and a secretary, that operate directly under him.

Q. All right. Moving on to service representatives, there is such an office in your organization, is there not?

A. We have a zone service and mechanical manager.

Q. How many people does he have?

A. He has 3 service representatives and a secretary.

Q. What is the function of these service representatives?

A. The service representatives primarily are for the [fol. 169] purpose of handling complaints on our products, both from the standpoint of the product on its receipt by the dealer, as well as complaints by owners with reference

to the operation of their product that for various reasons the dealer might not have been able to correct.

Q. Do they conduct training schools?

A. Schools are conducted by this department for the training of mechanics.

Q. And whose mechanics do they train?

A. They train the dealers' mechanics.

Q. Is it fair to state that the objective of your service representatives, or your service and mechanical representatives or manager is to foster good public relations with the consuming public, in order to promote sales in the aggregate?

A. I would say working with and through the dealer, that is one of their functions.

Q. Again, is the job description for your service representatives and your zone service and mechanical manager combined in your job classification?

A. Yes, it is."

Mr. Riley: At this time I might again refer to Stipulated Exhibit No. 4, Plaintiff's Exhibit No. 4, which describes the official job classification manual's description of that job. I referred to it earlier.

Returning to Line 25, Page 24 now.

"Q. Are they required to submit reports—interim reports and periodic reports to your organization and to [fol. 170] their counterparts in the regional organization?

A. Yes, they are.

Q. How is their performance measured?

A. One of the principal ratings is on the rapidity with which the complaints are handled to a satisfactory conclusion, and in some cases the degree and quality of the training that they offer to the mechanical organizations of the dealers.

Q. I am interested in paragraph 21-E, page 11 of the Direct Dealer Selling Agreement, which has been referred to earlier, and I quote:

'The Dealer will buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to Chevrolet owners.'

Is the stated policy in that paragraph supervised or administered by your service and mechanical representatives?

A. To a certain extent, yes, although it is also administered by myself and my assistant. However, the service department does do follow-up work and educational work with the dealers in that respect."

Mr. Riley: Once again, Your Honor, these quotes are being taken from Plaintiff's Exhibit No. 8, referred to earlier.

Now, the question at Line 22, Page 25.

"Q. I notice also that paragraph 21-A of the same Direct Dealer Selling Agreement provides:

'Dealer will condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.'

[fol. 171] Is it a part of the service and mechanical representatives' function to see that that provision of the contract is complied with?

A. Yes, it is, and they do. The check on that.

Q. Paragraph 21-F of the Direct Dealers Selling Agreement provides, 'Dealer will employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners.'

Is it a part of your zone service and mechanical representatives' function to see that that provision of the contract is complied with?

A. Yes. They counsel with dealers in that respect, too.

Q. To digress for just a moment, speaking generally with reference to paragraphs 21-A, 21-E, and 21-F of your Direct Dealer Selling Agreement that we have just referred to here, have similar provisions been contained in your dealer agreements for the last ten years?

A. Yes, they have contained similar provisions.

Q. Who establishes the standards that are described in paragraph 21-F, of the dealer employing a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners?

A. That is usually arrived at in conference with the dealer and his service manager, and it deals with such factors as the number of cars in operation in the dealer's

zone of influence; the amount of floor space, and facilities that the dealer has, and factors of that kind that would permit him to render a degree of service.

Q. Now, the service requirements of the Chevrolet owners—that phrase—and I will quote it again: 'To meet [fol. 172] adequately the service requirements of the Chevrolet owners'—where is that described, or is it described in any written manual or printed publication?

A. Well, we have an owner's manual that is in every new car and truck that is delivered, that sets forth specifically the service that an owner is entitled to receive. Also, it sets forth the warranty with reference to that product.

We also have a booklet that is provided to our dealer that explains to him our service policies and procedures with respect to the product that he sells."

Mr. Riley: At this point, Your Honor, counsel has agreed to produce certain documents which were referred to in a Motion to Produce.

I am thinking in terms of the owner's manual and service manual, Counsel, Chevrolet owner's manual and service manual.

Mr. Williams: It will just take me a minute.

Mr. Riley: Then do you have the owner's manual?

Mr. Williams: Yes, it will take just a moment.

Mr. Riley: Now, Counsel, may we stipulate that these are representative of the audit periods?

Mr. Williams: As far as I know, they are. Yes, I am sure they are.

Mr. Riley: If Your Honor please, I offer at this time Defendants' Exhibit No. 9, which is an owner's manual for [fol. 173] the year of 1950, for Chevrolet products. Some of these have the owner's warranty in them.

If Your Honor please, I am offering Defendants' Exhibit No. 9, which, as I say, is a Chevrolet owner's manual for the year 1950, which was referred to just a moment ago in the testimony of the witness at Line 17 of Page 27.

Counsel, would you state the affirmative of this for the record, as indicated, stipulating that this is representative concerning owners' manuals for Chevrolet owners products for that period?

Mr. Williams: We will so stipulate.

The Court: Are you objecting?

Mr. Williams: No, I am not objecting.

The Court: Then Defendants' Exhibit No. 9 is admitted without objection.

(Whereupon, a Chevrolet Owner's Manual, 1950, previously marked for identification as Defendants' Exhibit No. 9, was received in evidence.)

Mr. Riley: Now, Your Honor, Defendants' Exhibit No. 10, which I now offer, constitutes the manual of service department policies and procedures effective June 1, 1950, which counsel has again indicated, and is willing to stipulate, is representative of similar manuals for the other years of the audit period involved.

Mr. Williams: That is correct, Your Honor.

Mr. Riley: And which was again referred to in the [fol. 174] testimony of the witness just a moment ago.

Now, these manuals, of course, digress considerably from the subject matter of the action here, but the warranty itself, as set forth on Page 3 of Exhibit No. 10, that is, to the dealer, it also describes the dealer's obligations and the relationship to the manufacturer in making warranty adjustments, and I will quote from two paragraphs at Page 3 of this document. It says: "Under the provisions of your Selling Agreement," and they are referring here to the Dealer's Selling Agreement, "You have agreed to install any part furnished to you under the above Warranty without expense to the owner and for such service work you are to receive from Chevrolet Motor Division, General Motors Corporation, credit based on the recommended Chevrolet Flat Rate Manual time allotments multiplied by one-half of the labor rate related thereto, as agreed upon with Seller, and which allotments and rates are in effect at the time such work is performed by you."

It then goes on and describes exceptions and conditions and the authority of the dealer to make warranty adjustments and the procedures for claiming compensation for accomplishing these warranty adjustments for the manufacturer, which is in this case General Motors.

The Court: Any objection?

Mr. Williams: No objection, Your Honor.

The Court: Defendants' Exhibit No. 10 may be admitted without objection.

[fol. 175] (Whereupon, a Service Manual, 1950, previously marked for identification as Defendants' Exhibit No. 10, was received in evidence.)

"Q. Do you have copies of the owner's manual, the warranties, and other undertakings on the part of General Motors to the purchaser, and the booklet which you provide to dealers explaining your policies and procedures, here?

A. Yes, we have—that is, the current ones.

Q. With relation to the schools, are these conducted every year, or semi-annually, or quarterly?"

Mr. Williams: Just a moment, Counsel.

May it be understood, Your Honor, as I notice counsel is making certain statements with respect to these exhibits as he introduces them, explaining in part his theory with respect to them, that in my not objecting to the exhibits as such I am not adopting counsel's statement in connection with it?

The Court: I think that is rather obvious.

Mr. Williams: Thank you. I just wanted to make it clear.

"A. They are conducted at different periods of time throughout the year, depending upon—oh, different circumstances—sometimes due to a chronic development that may come up in the product, and as a result of that a school would be necessary in order to educate the organization or mechanics how such a thing should be handled.

Q. I suppose you have an annual school preliminary to the introduction of new models.

A. We always have schools for that purpose.

[fol. 176] Q. Are dealers required to send representatives to attend those schools?

A. We ask they do—that they have a representative at least from their organization. However, there are many dealers who do not send any mechanics to those schools.

Q. Do you conduct schools periodically for the training of mechanics who are new to the Chevrolet organization?

A. Not particularly—no, we don't—not at the zone level.

Q. To digress again for the moment, while we are on the topic of schools, at the zone level do your parts and accessories representatives conduct schools for the employees of your dealer organization?

A. Yes, there are schools conducted. There are training programs that are conducted by us for them.

Q. Where do you locate these schools?

A. In those particular cases we bring them in to a convenient central point, and, in addition, keep the group as small as possible in many cases, for better education.

Q. Do you conduct these schools in a given dealer's location, or do you have different spaces for that purpose?

A. Only on very rare occasions do we conduct them in a dealership. They are usually conducted at a hotel, or some meeting point.

Q. What would be your geographical breakdown of these schools, either for service representatives, or for parts representatives—would it be the district?

A. In some cases, yes, and in other cases, depending upon the nature of the program, it might embrace two or three districts at one time.

[fol. 177] Q. Now, to go back to the Direct Dealer Selling Agreement, I am interested in the procedure for making warranty adjustments, and I refer now to paragraph 21-H, which is on page 12 of the Direct Dealer Selling Agreement, which states:"

Mr. Riley: I am at Line 16, Page 29, Your Honor. I am quoting from Defendants' Exhibit No. 8.

"'The Dealer will replace any defective part or parts as comprehended under the warranty set forth in Section 9 hereof, on motor vehicles sold by Dealer without expense to the owners of such vehicles, and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit Dealer an amount equal to the then current dealer cost of such product,' and so forth.

Are these adjustments made by the Dealer in addition to the adjustments that your service representatives make in the course of their administration of the job?

A. Well, any adjustment that a dealer makes, he does so of his own decision. However, in line with his contract and agreement with us, he then makes a claim to us within

the framework of our policy that is in effect at that time. The District Manager has no authority to change anything in that procedure. He may only enter into an instrument like that with respect to making an inspection to report to us, but other than that, he makes no decision.

Q. Who approves these claims that are made by the dealer under that provision of the contract?

A. Those claims are processed through what we call our MR room, which is the materials return room. The incident is written up on a form known as an L & MR, and the claim is filed with us, setting up all the facts in connec-
[fol. 178] tion with it.

Q. Where is your L & MR located?

A. It is located in Portland.

Q. And is your Zone Service Manager related to that organization—to the MR organization?

A. Yes. He receives information from the MR room as to the type of claims that are coming in, and as to the number, which, in turn, helps him to determine where his work might be better directed.

Q. Would you explain to me what this flat rate system is which is described in paragraph 21-G of the Direct Dealer Selling Agreement?

A. The flat rate is the time that it takes an average mechanic to perform a mechanical operation on our product. It is a time study that is made by a number of mechanics performing that operation, and as a result of that, a time limitation is established. For example, a certain operation may take on that basis two and four-tenths hours to do. That means that the charge to the customer should then be on the basis of 2.4 hours times whatever hourly rate that dealer is charging.

Q. And are the provisions of 21-G supervised and administered by the service and mechanical representatives in your zone?

A. No, they are not, except to this extent, that the flat rate limitations become the basis in filing claims against us.

Q. Is this requirement imposed upon dealers with respect to their relations with their retail customers a part of your policy of maintaining a good customer relation
[fol. 179] and public relation as far as the Chevrolet name is concerned?

A. We counsel with any dealer who we feel is not obtaining good customer relations for any cause. However, we have never interfered with a dealer in making any charge that he feels is in order to a customer.

Q. If you receive a complaint from a purchaser of a Chevrolet motor vehicle, who states that on the replacement of a carburetor he has been charged so many dollars, and according to the Chevrolet flat rate system that charge was double the charge indicated by your flat rate schedule, what procedure would you institute at the zone level?

A. In such an instance we would go to the dealer and endeavor to find out why such a charge was made, and if, in our opinion, we felt that it was out of line, we would counsel with the dealer and suggest that he make the proper charge, or a charge more in line with what we recommend.

Q. Do you consider the flat rate system to be a maximum charge that should be made by a dealer?

A. No, and in some instances it might not be. It might not be the maximum. I would say that a more proper evaluation might be that it is an average.

Q. I am interested now at this time in your accountancy policies. I understand that in the agreement it provides, at paragraph 15, and I have omitted the first paragraph, 15-A:"

Mr. Riley: I am again quoting from Plaintiff's Exhibit No. 8.

"'Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system des- [fol. 180] ignated by Seller, and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement.'

I have not given you the whole paragraph there, but my question is, how is this policy administered—this contractual prerogative administered?

A. I do not believe I understand your question.

Q. To rephrase my question, how do you enforce this provision of the contract on dealers?

A. Well, in the majority of cases, having already agreed to it in the agreement, most dealers supply us with such information. Those dealers that do not, we then counsel

and work with them, pointing out that not only is it a requirement that they furnish us with this information, but for other valid business reasons, particularly taxes and things of that character, they should supply us with a statement, and we work with them along those lines.

Q. Paragraph 15-B provides, "In order to assure the maintenance of a uniform accounting system, and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller, or acceptable to Seller, at such time or times as Seller may designate.'

Do you have personnel in your zone organization who are in charge of this, and who audit dealers' accounts and records?

A. Yes, we do. The manner in which we do that is this, we have many contests and programs where a dealer is filing claims against us, and our inspection of his records [fol. 181] merely consists of checking such figures and facts as will determine the correctness of his claim.

Q. Do you have a periodic examination of his accounts and records, aside from the contest records that you have mentioned?

A. No. We make no such examination in the sense of an audit, or any verification of accounts for any financial purposes at all.

Q. Does the dealer submit to you balance sheets periodically in your zone office?

A. Yes, he does, a balance sheet and profit and loss account.

Q. Is this a standard form?

A. This is a standard form.

Q. How often are those submitted?

A. Once a month.

Q. Do you have within your zone organization an accounting representative, or an accountant, who is in charge of administering these provisions within your zone? I think I asked you that before, but I will ask it again.

A. We do.

Q. And what is his title?

A. His title is Zone Business Manager.

Q. Is he assisted by any individuals?

A. He has a clerk and a secretary.

Q. Does he conduct most of his business or his work within his office, or does he visit the dealers from time to time to accomplish his work?

A. He works between the office and dealers, and contacts the dealers.

[fol. 182] Q. Again, does he conduct procedural schools or instructional courses for dealer representatives within the zone level for training purposes?

A. From time to time he does—yes.

Q. What would be the mission or objective of your Zone Business Manager within the zone, then?

A. His principal mission is to counsel with our dealer from the standpoint of their financial condition, and with relation to, and improvement in such areas of their operations as would make them more profitable.

Q. Is it fair to state that the capitalization requirement of the dealers is considered to be an important part of the zone level of the Chevrolet Motor Division?

A. We feel that any business, particularly one like ours, needs proper capitalization, and proper return in the way of profits for good results of any kind.

Q. I pass on now to the advertising programs. Does your office take cognizance of responsibility for the conduct of advertising programs of any kind?

A. You are speaking of the period that we are referring to here?

Q. To begin with right now.

A. We have at the zone level nothing whatsoever to do with advertising, except that from time to time we may pass on to our dealer organization suggestions or facsimiles of advertising that are being used by other dealers, but as to the advertising policy, no, we have nothing whatsoever to do with that.

Q. Who administers the Dealers' Cooperative Advertising Fund?

[fol. 183] A. That is administered in our central office through our advertising agency, Campbell-Ewald.

Q. Do they have offices here—do you know?

A. Campbell-Ewald do not have any offices here. Their closest office is in San Francisco.

Q. These advertisements undertaken by dealers that you have referred to, that you pass on to dealers from time to

time as suggestions, are these paid for by the dealers, or by General Motors?

A. In those cases, those are put in at the dealer's own option, if he cares to use them."

The Court: This would be a good time to take a recess.

Mr. Riley: Thank you, Your Honor.

(Recess.)

Mr. Riley: Resuming the interrogation, commencing at Page 36, Line 17.

"Q. Do you have any subsidized aid program, in addition to the Dealers' Cooperative Advertising Fund for handling advertising at the local level?

A. When you use the term 'Dealers' Cooperative Advertising Fund', we have no such charge any more. In other words, it is not on a cooperative basis. All advertising now is paid for by the factory, and any income that we may have for that purpose is evidently included in the price of the merchandise to the dealer, and not set forth as a separate item.

Q. When was that changed?

A. That was changed with the inauguration of our new [fol. 184] contract, as I recall, back in 1956."

Mr. Riley: I would comment, Your Honor, that this reference to Dealers' Cooperative Advertising Fund is referred to and is set forth and described in Exhibit No. 8, as well as in Exhibit No. 2, in portions of the paragraph which can be referred to through the exhibit, and I just wanted to call Your Honor's attention to those two portions of those two exhibits, because this system was in effect during all of the audit periods here involved.

I had indicated, and I would make this motion for the record, to delete from Line 5 of Page 37 through Line 18 of Page 38, mostly because it is duplicitous.

Mr. Williams: I think, Your Honor, consistent with my previous request, we would like to include that reading.

The Court: Very well.

Mr. Riley: I mean, just without waiving anything I just wanted to make that statement for the record, but I am anticipating Your Honor's position.

The Court: Very well.

"Q. Without asking for particulars for this particular zone, in the period of 1949 to 1953, or through 1949 to 1953, there was such a fund as the Dealers' Cooperative Advertising Fund?

A. Yes, there was.

Q. At that time, as far as you know, dealers who might elect to publish ads, or to advertise locally, were they sub- [fol. 185] sidized in any way by General Motors, or the Chevrolet Motor Division through the Dealers' Cooperative Advertising Fund, which existed at that time?

A. To my knowledge, no.

Q. In the period from 1949 to 1953, were there zone representatives for the conduct of local advertising, using the funds in the Dealers' Cooperative Advertising Fund assigned to the zone organization?

A. You are speaking now of my previous connection in other zones in that respect?

Q. Yes.

A. We had no jurisdiction over, or administration of any cooperative advertising funds at the zone level.

Q. In 1949 to 1953, who did have responsibility for spending and allocation of the Dealers' Cooperative Advertising Fund?

A. That was handled by our central office advertising department, in conjunction with Campbell-Ewald.

Q. And as I understand it, as far as that period is concerned, they had no representatives assigned to the zone organizations?

A. To the zone organizations?

Q. Yes.

A. You mean anywhere?

Q. Yes.

A. Well, Campbell-Ewald have offices other than just in Detroit, if that is what you mean.

Q. I was thinking of employees of the General Motors organization who are concerned with advertising, and the [fol. 186] administration of advertising programs.

A. No, we have no representatives in the advertising department that operate at the Zone office level.

Q. In the case of the showing of new models, and the ads which are placed in local papers at the location of your

dealers within the zone, are those handled by the dealers, or by the national organization?

A. Well, if they are ads that we put in as factory ads, why they are put in by us and paid for by us.

Q. Do you have responsibility for placing any of those ads at the time of the annual showing of the new models?

A. None whatsoever. That is all handled out of Detroit.

Q. Passing on to the function of the district managers, is there any title that they have?

A. They are called district managers.

Q. Would you state again the number of district managers you have in the Seattle Zone?

A. We have nine."

Mr. Riley: Deleting Lines 9 through 11.

Mr. Williams: No objection.

"By Mr. Riley:

Q. What are the duties and responsibilities of your district sales managers?

A. Well, the duties essentially are the maintenance of a quality organization—dealer organization—and the follow-through and administration of programs, plans and procedures within their district, that will help to develop the dealer organization, for the best possible financial and sales results."

Mr. Riley: At Line 22, Page 39, Your Honor, I think we [fol. 187] would like to refer to Your Honor again the job description which is contained in the job classification, which is, of course, not exclusively referred to in portions which are contained in Exhibit No. 5, but Exhibit No. 4, the part that is material, describing the duties of district manager, that is set forth on Page 2 of that exhibit, and is as follows: "His responsibility is to maintain the required dealer organization in the territory assigned to him and to promote the business of the Division in this territory. In carrying out this responsibility, he is to contact assigned dealers or branches in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the Divisional sales policies, promotional, and training plans to improve the selling ability

of the sales organization. His duties include contacting assigned dealers or branches at designated intervals and securing orders for the Division's products; to assist the outlet's Sales Manager in organizing and training its sales force; to assist in controlling the used product inventory; to advise outlets of changes in Divisional policies. Passes on to dealers any knowledge gained of competitive products and is responsible for closing open points."

Back to Line 22 of Page 39.

"Q. They, of course, have a more direct relationship with the individual dealers, I take it?

A. Directly. They contact the dealers directly—yes.

Q. On what occasions do you see the dealers personally? [fol. 188] A. Well, I see all of the dealers quite frequently, at least every sixty days in meeting form, and between those meetings we have other group meetings, to a point where in some cases I see some of our dealers almost every month in the year. Then I see other dealers, depending upon various circumstances, throughout the year at various times. It is hard to say.

Q. Would it be fair to say that generally the relationships or the interviews by the district managers are conducted at the dealer's place of business, whereas yours are conducted at a zone level, or in your office generally?

A. Well, I would say that that is correct with reference to the district manager. Most of his contacts are more in the dealership. I would say in my case it might be a 50-50 proposition."

Mr. Riley: I might make this comment at Line 15, Page 40, Your Honor, that the witness here, and this is Mr. Snyder, is a Zone Manager who has supervision and control of district managers, and he is talking in terms of his job as Zone Manager, and also describing the duties of the district manager. The description that I just referred to in Exhibit No. 4, which is essentially the same for Pontiac and Oldsmobile, as indicated in other exhibits, was describing the duties of the district manager. There is also a description in the job classification manual which I felt was material indicating the activities of this field organization, of the Plaintiff here, within the State of

Washington, and the zone managers' duties were described at Page 1 of Exhibit No. 4 and Exhibit No. 2, [fol. 189] and that is as follows, and I think the language there is just as emphatic and impressive as it was in the case of the duties of the district manager, but I am quoting now the duties of the zone manager from the job classification manual for Chevrolet Division: "The Zone Manager is in complete charge of Zone Sales, Service and Parts and Accessories Merchandising and Warehousing Departments. He is responsible to the Region Manager for the sales of its products. He must possess a broad knowledge of the business—both from a selling and good business practice standpoint. He must have the ability to read financial statements and make recommendations for improvement of business and make profits where necessary. He must qualify in business relationships to be able to hold the respect of the Zone and Dealer organization."

I am returning then to the deposition at Line 16, Page 40.

"Q. I take it that your principal job, or one of your principal objectives or responsibilities would be supervision, then, of your nine district managers?

A. Indirectly, yes. Directly, the nine district managers operate under my assistant zone manager, and report to him, and I check their operations through him.

Q. Do they submit written reports or periodic reports to you?

A. Yes, to him.

Q. Or to you?

A. To the assistant zone manager.

Q. Are these a matter of form, as well as written reports which are not a matter of form?

[fol. 190] A. I would say that there are some of both.

Q. Are these reports prescribed by, or described in your zone office manual?

A. Yes, to a great extent they are."

Mr. Riley: Here, Your Honor, I asked the Plaintiff to produce, and they have produced, certain portions of the Plaintiff's—this is Chevrolet's zone office manual as

well as Pontiac's, from which Oldsmobile does not differ substantially, and these portions are set forth in Exhibit No. 5. It is a somewhat voluminous transcript there, and I just make that reference now, and the comment that by thumbing through these, and particularly that part dealing with sales—pardon me, Your Honor, I will make reference to the exhibit.

Now, particularly that portion which is referred to as the Business Management Section, as well as the Contracts and Cancellation Section, making reference further to the relationships of the field organization with the dealer organization.

"Q. Is there a counterpart of manual instructions for district levels of your organization?

A. There is a manual known as the 'District Manager's Manual', yes."

Mr. Riley: Deleting Lines 11 through 13.

"By Mr. Riley:

Q. You mentioned that you see the dealers at least every sixty days at meetings. Do you conduct zone meetings at that interval?

A. Yes. I conduct usually two meetings which splits my zone in half. I conduct one here in Seattle, and one in [fol. 191] Spokane, and all of the dealers in the zone come to either one of the two meetings.

Q. What is the function or purpose of these meetings?

A. In the main it is usually a discussion of the current situations existing in the automobile industry, and a presentation of such programs or plans as we have developed either at the zone, the regional, or the national level.

Q. Are these for the purpose of instruction and for development of your sales?

A. I would say that they were educational and promotional in character.

Q. And using the term 'promotional' I take it to mean to promote a higher sale of the product with which you are concerned?

A. Yes, that, and also financial return to the dealer.

Q. Referring to the provisions of the Direct Dealer Selling Agreement, described as 'Operating Requirements' on page 9, are these requirements promulgated or described in any written publication, speaking generally, in terms of the place of business, capital requirements, building service, and the dealer's personal services?

A. You mean in the form of a manual?

Q. Yes.

A. Yes. There has been certain information—I don't know as you might term it exactly a manual—there has been, with reference to capital requirements, certain information explaining in more detail just how the program should operate. We have that both for our own personnel, to explain it, and also we have it in an educational form [fol. 192] for the dealers."

Mr. Riley: Now, I want to refer Your Honor at that juncture to Pages 75 to 79 of the Business and Management Section of Exhibit No. 5, which goes into some detail in the standards and procedures for promulgating standard capitalization that is required, as the Defendant views it, of the Chevrolet dealer organization by the Plaintiff, and it does go into some detail there.

Now, if the Court please, I am referring to those portions of Exhibit No. 5 which are separated by binder marked as Business Management, and I am referring to Page 75. This describes the Chevrolet Minimum Capital Standard Program, and I would like to quote briefly from this, if Your Honor please: "Chevrolet has administered a Minimum Capital Standard Program since July 1947. Revisions to this program have been made on several occasions. A basic change was made on November 1, 1955 which eliminated the requirement for a stated amount of Owned Net Worth and which revised certain of the formulas for the determination of the Owned Net Working Capital Standard."

It then proscribes the standard, and it is broken down in terms of cash receivables, inventories, miscellaneous inventories, prepaid expenses, and is followed by a form of revision of the dealer's agreement proscribing the standard capital program, and other details. That goes on for

about six pages. There are various forms. After the forms, commencing at Page 78, are further instructions and so on of the same procedure.

[fol. 193] I think that is sufficient reference.

"Q. Now, referring to Paragraph 12 of the Direct Dealer Selling Agreement, it says, 'Dealer will maintain a place of business, including sales room, service station, parts and accessories facilities, and used car facilities, satisfactory to Seller, and will maintain the business hours customary in the trade.'

That is the first sentence in that paragraph.

How do you determine that a dealer is complying with that contractual requirement?

A. Well, it is usually decided upon mutual agreement between the dealer and a representative of the Chevrolet Motor Division, being acceptable to both parties, as being the best location, and adequate.

Q. And does this representative of the Chevrolet Motor Division have any written standard or guide by which he judges the dealer's facilities?

A. None, except reference is often made to other operations of similar size as a guide, but specifically, no. We have some minimum requirements that apply to facilities, but they are merely guides. They are not in any sense requirements.

Q. All right. I will pass that for the moment.

Now, getting back to the sales effort, do you conduct sales training schools for dealers and members of their sales organization?

A. Our principal function in that connection is to conduct quizzes of the salesmen to determine that the dealer himself has adequately trained his organization to sell [fol. 194] our product. We do at the district manager level sometimes work with the dealer or sales manager in helping him to conduct sales meetings in a dealership.

Q. Are these sales meetings at a given dealership location for the purpose of instructing salesmen?

A. In some cases, yes, and in other cases it is perhaps to explain some promotional venture that the dealer, or the dealer and ourselves may be putting into effect.

Q. Then do you have any other training programs that you conduct at the zone level for the purpose of stimulating sales at the local level, or training salesmen?

A. Well, we have at the present time—are you asking at the present time, or back in this period here?

Q. At the present time. I will confine my question now to the present time.

A. Okay. We have a training center in Tigard, Oregon that periodically conducts training programs for sales managers and retail salesmen.

Q. Then to go back to the period of 1949 to 1953, was there a similar institution or facility in this area?

A. No. We had no such facility and such programs were very few in number.

Q. I am interested in the procedures that you utilize for establishing or showing your new models. Who fixes the dates for the first showing each year?

A. That is established by Detroit.

Q. That is a national figure?

A. Yes.

Q. Do you conduct sales meetings or have showings to [fol. 195] the dealers prior to that date?

A. We have what we call a pre-showing to dealers and their retail organizations approximately two or three weeks prior to the public announcement.

Q. Where are those conducted in the State of Washington?

A. Usually, if they are held in the State of Washington, we hold them here in Seattle, otherwise, we hold them in Portland, Oregon.

Q. Are they always conducted at a zone level, or do you break these down and conduct them at a district level?

A. They are always held at a zone level.

Q. With reference to sales promotion material that you referred to obliquely a while ago, you did have a warehouse for the retention of these materials. Now, will you describe your function with regard to the sales promotional material and your distributing of that material at the zone level?

A. The sales promotional material, of course, is exhibited and explained to our dealer organizations at meetings, or by individual presentation in the dealership, and then the dealer is given the opportunity of acquiring such material.

Q. Isn't it a fact that you just automatically mail the standard promotional material to them, or that you automatically distribute to them the standard promotional material?

A. No, we, as I say, make a presentation of whatever the material may be, and then it is on the basis of either the dealer buying it, or refusing to buy it.

Q. Is this true during the period of 1949 to 1953 that that [fol. 196] was the procedure followed?

A. Speaking of my own zone, I would say yes, this was the procedure followed.

Q. How is the charge handled for the cost of these sales promotional materials? Is that on a share basis? In other words, does General Motors share a part of the cost of these materials?

A. No. The announcement materials, which represent the biggest purchase that a dealer makes during the year, at announcement time,—back in—let me see—1949 to 1953, during part of that period we merely acted for a number of different suppliers of that material, and took orders for them. Subsequently, and I do not know just what time the change took place, the General Motors Photographic Division acted as a collator of all the suppliers' materials, and we took an order which was processed through them for the dealer. As I say, we presented the materials to the dealer, and then the dealer placed his order for such items and quantities as he desired.

Q. The General Motors Photographic Division then allocated to you quantities of this material, is that right?

A. There were no objectives supplied to us by that division, no.

Q. But they sent you a given amount of material, isn't that right?

A. There were no materials sent to us, other than samples to show the dealers.

Q. Is this at the present time, or are you speaking of the period from 1949 to 1953?

[fol. 197] A. That is the case now, as it was then.

Q. How about the little brochures? You have brochures, I take it, which depict in various colors and models the Chevrolet line of vehicles?

A. Yes, sir.

Q. Are those paid for by the dealer?

A. No. That is supplied gratis to the dealer.

Q. What other materials do you supply the dealer gratis for his sales promotional activities?

A. There are from time to time items as window trim; 40 x 60 placards, and some decorative material that we supply to the dealer free of charge.

Q. Now, that reminds me of this provision here in the Direct Dealer Selling Agreement, paragraph 22, which states:"

Mr. Riley: That, Your Honor, again is Exhibit No. 8.

"'Dealer will purchase, erect and maintain at his own expense the following signs:

A. Product sign.
B. Service sign.
C. Other necessary signs.'

Does General Motors absorb any of the cost of these signs—these standard Chevrolet signs that they are required to install on their premises?

A. To my knowledge, they do not.

Q. Who in your organization is responsible for ascertaining whether a dealer has complied with paragraph 17 of your Direct Dealer Selling Agreement, which says, 'Sales Staff. Dealer shall maintain a staff of salesmen and a sell-[fol. 198] ing and customer relations organization adequate to take care of the sales potential of the area described in paragraph first'?

A. Well, principally that is determined by the sales promotion manager, in conjunction with the work done by the truck manager in the zone office, and the assistant zone manager—all of those people working through the district manager and with the district manager.

Q. Have you had occasion in your experience, since you have been here in Seattle, to request a dealer to add salesmen to his sales staff?

A. Oh, yes. Yes, we have.

Q. Now, the term 'sales potential' used in that paragraph, would you define the term for me, or describe it?

A. Well, in a broad sense it is an analyzation of registration information as to the past history of a market within

a given area, and such economic and other factors as may have a bearing on the future of those figures.

Q. How is that expressed—in terms of anticipated volume of sales, or units of sales?

A. It is expressed in terms of anticipated sales volume.

Q. Is it fair to say that the district managers in the zone organizations—that their objective is to see that the dealers accomplish that sales potential each year?

A. We usually counsel with the dealer to obtain the sales performance commensurate with what the organization nationally is doing.

Q. I take it that you have various contests and various other promotional activities that you conduct at the district [fol. 199] and zone levels to assist in achieving that objective, or that sales potential?

A. We use those for commercial purposes—yes.

Q. Would you describe what promotional activities you do conduct at the zone level?

A. You mean that are originated at the zone level?

Q. Yes."

Mr. Riley: Delete Lines 22 to 25, Page 49, and all of Page 50.

The Court: We will be at recess until one-thirty.

(Recess.)

Mr. Riley: I think we were on Page 51, and with your permission, Counsel, I will commence with Line 13 with the question, rather than the preceding colloquy.

Mr. Williams: That is fine.

"Q. Would you describe what promotional activities you do conduct at the zone level?"

A. Well, those programs would be of a promotional character, probably slanted a little bit more closely to local conditions than similar type programs that might come out from Detroit or from the region, and would involve activities and programs in either sale of new cars and trucks, or used cars and trucks.

Q. Well, what are these—just sales contests?

A. They are sales contests and campaigns designed to assist the dealer in going out and obtaining more business.

Q. There are awards provided the winners in the campaigns?

[fol. 200] A. Yes, awards are provided. They are either prizes, or trips, or in some cases cash is given to the dealer.

Q. And who pays for these?

A. They are jointly paid for. The dealer puts up 50% of the cost, and we put up 50% of the cost.

Q. Is this in a common fund—a fund from all the dealers in the whole zone—is that the idea?

A. No. Every dealer is offered the opportunity of participating, and if he refuses, why, of course, he is left out of the activity. There are some dealers who do not enter into these activities at all. Those that do, what amount they contribute, we contribute a similar amount, and the money is placed in trust for that particular activity, and then is disposed of based on the agreed activity between a committee of dealers, and usually myself and my assistant, representing Chevrolet.

Q. This contest, is it administered or handled down at the district level by the district managers?

A. Well, they cooperate, shall I say, in the administration of the activity, yes, in any way that they can to insure its success.

Q. Now, you mentioned regional programs and national programs. I take it that you have other programs then on a regional and national basis?

A. That is correct.

Q. Could you give us a general description of what those consist of?

A. Those are similar in character to the type that I have mentioned that we have for the zone, except that there is [fol. 201] one theme to the activity, and the awards are broader in scope from the standpoint of their value, as well as the number of awards that are presented.

Q. But these are all promotional activities?

A. They are all designed to assist the dealer to increase his business.

Q. And incidentally, to increase the performance of your own unit?

A. Well, as an indirect result, because as a dealer increases his business, we naturally increase our business to him."

Mr. Riley: May I digress for just a moment, Your Honor? That is again with reference to the Chevrolet zone office manual relating to the sales promotional activities, and one of the parts of that manual I was interested in and that I would like to call Your Honor's attention to is one of the promotional programs that is conducted by Chevrolet that is nationwide and at the local level, the so-called Fifty and One Hundred Car Club. It is at the first part of Exhibit No. 5, Your Honor. It is captioned as the Zone Sales Record. This supplement to Part "G" is referred to as the supplemental in "G" Section, and it describes it in detail, and it isn't necessary and I won't go into it in detail here, to review it in detail.

(Whereupon, there was an off-the-record discussion.)

Mr. Riley: If Your Honor please, just to summarize, Your Honor may find it interesting and illustrative of the point I was making, that is, the "G" Supplement to the [fol. 202] Zone Sales Record, which is the first part of Exhibit No. 5, and it goes into detail in describing this promotional activity of the Plaintiff, which in our view is designed to stimulate sales at the local level.

"Q. I was interested in your procedures requiring standardization in policy, insofar as used car lots are concerned. Is it fair to say that all of your dealers have similar policies with respect to the administration of their used car departments?

A. I would say that basically they follow generally the accepted merchandising format that we recommend in Chevrolet.

However, many of them go beyond that, and have their own personal programs in addition.

Q. I was interested in the so-called 'OK Used Car Program'. Is that a trade name, or is that a standard nationalized concept administered by Chevrolet?

A. Yes, similar to other firms in the business we have that as a copyrighted symbol, and use it as a basis of symbolizing our recommendations to a dealer in his merchandising of his used merchandise.

Q. Do you have any dealers that do not utilize the 'OK Used Car' concept?

A. Yes. We do have.

Q. Can you give me an indication of the numbers?

A. I would have to check our records to be accurate. I could only give you an approximate figure. I would say in this zone the number would be considerably under 5%.

[fol. 203] Q. Is this 5% a particular group of your dealers? That is, are they all metropolitan dealers, or are they all rural dealers?

A. Those dealers that are not using the program 100% would be—in this particular zone would be the smaller type of dealers. That is the way that we refer to them.

Q. Now, do you have a standard color arrangement used by dealers in their 'OK Used Car' lots?

A. Yes. The symbols and the trademark are standardized.

Q. Are they subsidized in any way by the General Motors Chevrolet unit in conducting this 'OK Used Car' program?

A. Who do you mean by 'they'?

Q. The dealers.

A. No, we do not in any way subsidize anyone.

Q. With reference to the tags or promotional literature describing the 'OK Used Car' concept, do you have standard literature prepared for use on the used car lots?

A. We have standardized price tags, and we have standardized warrant forms that the dealer can use, which we supply to the dealer upon his order.

Q. Are these provided gratis?

A. No. There is a charge made to the dealer which, I understand, covers our cost of production.

Q. Incidentally, with respect both to the used car program and with respect to the sales promotion programs at the zone, regional and national levels, were activities similar to those conducted in the period from 1949 to 1953?

A. Insofar as my zone operations were concerned, yes.

Q. The 'OK Used Car' concept, and the sales promo-[fol. 204] tional activities have been pretty much General Motors and Chevrolet policy for a considerable period previous to 1949, is that correct?

A. In a general sense, yes.

Q. Your Direct Dealer Selling Agreement again makes reference to conduct of used car business—at least I think

it does—I think there is something about a used car department in there, is that right?

A. Yes, there is.

Q. What paragraph is it under?

A. It is under the sales section. I do not know what the paragraph is. You will find it in there under used cars. I do not think you will find it in the index. There is an addendum, however.

Q. I have an addendum here, but it does not cover that. I will strike that last question.

I will ask you regarding an addendum to the Direct Dealer Selling Agreement that I have here, is there a particular addendum that has been in use since 1949?

A. I do not know the year that it came out, but there is presently an addendum on the 'OK Used Car' activity. I do not know whether it existed in 1949. As I recall it, it came in after that. I am not sure just when, but we have one at the present time.

Q. All right. Let us pass on here."

Mr. Riley: Counsel, can that be changed to say "used car materials"?

Mr. Williams: All right.

"Regarding supervision and control of the use of these [fol. 205] used car materials, relating to the used car concept, whose responsibility it is to see that these materials are used in accordance with the Chevrolet policy, or the General Motors policy?

A. It is the principal responsibility of the zone used car manager.

Q. Now, how many individuals do you have in that department of your zone organization?

A. We have a zone used car manager, and he has a secretary, and the zone used car manager is supplemented to a certain extent—more so perhaps than other departments—by assistance from the assistant zone manager.

Q. And what are his resposibilities?

A. His responsibilities are to work with dealers in assisting them to promote the best possible display of their merchandise; to follow the best possible merchandising methods in selling that merchandise, and to work with

them in developing the best methods of reconditioning their products.

Q. Do you conduct schools from time to time on how to recondition?

A. Yes, we do.

Q. Is that instruction carried out in the dealer's place of business?

A. Yes, it is. We have one program where we go into the dealership with a truck, and actually demonstrate the use of the materials, and how the workmanship should be performed.

Q. Does the dealer absorb any part of the cost of that program?

[fol. 206] A. Yes. There is a charge that is made for that to offset the cost of the person who does that work, as well as the operation of the truck.

Q. Of course there is no profit in that for General Motors?

A. No. It is purely on a cost basis.

Q. And it is not done just solely for the dealer's benefit, is it? What is the objective as far as General Motors and the Chevrolet unit are concerned?

A. Our first objective is to make certain that the public understands that the dealer is doing everything that he can in living up to the precepts and concepts of the used car program which we nationally advertise, and, further than that, to specifically help that dealer improve the merchandising of his used product, which, in turn, might assist him to sell and merchandise a better volume of new units.

Q. Is it fair to say that it is also designed to maintain and promote in the public eye the Chevrolet name and the trade concept to maintain public popularity?

A. Well, I would express it in this way, that it is designed to build confidence in the eyes of the public that reputable used merchandise can be purchased from a Chevrolet dealer.

Q. This zone used car representative program, has that been in existence since prior to 1949?

A. To my recollection I think that that came in after 1949, or about that time. I cannot recall just when it came

in. I don't recall the exact date as to when that started, but as I recall it, I think we have had such a position in the zone office, to my recollection, at least eight to ten [fol. 207] years anyway.

Q. I am interested in the ordering procedure now of motor vehicles. Do you have a standard form of ordering vehicles—that is, for dealers?

A. Yes, we do have.

Q. Would you describe just in general terms the ordering procedure used by dealers to establish and maintain their stocks of vehicles?

A. Well, in general there is what is known as a projection or an estimate that is arrived at in consultation with the dealer, or with the dealer's sales manager, to determine what the dealer reasonably should stock and possibly sell, projected upon his sales potential for the area that he is operating in. Once that projection and estimate has been made, and a meeting of minds between the district manager and the dealer, or his representative, arrived at, the dealer then places individual orders with us on a separate form for the merchandise. Those separate forms, of course, are to allow him to specifically specify color option, and things of that character.

Q. Well, this projection, that is actually the establishment of a sales quota, isn't it?

A. It is the establishment of an estimated sales pattern, as I call it,—a pattern as to what the dealer feels that he might be able to do in the way of sales.

Q. But the dealer who stocks that new car actually has no choice of what his opening inventory is going to be—his inventory of new models?

A. To a certain extent he does have, because we ask [fol. 208] him for his preference, or what he would like, and we endeavor to come as close to that as possible for his initial cars for display purposes.

Subsequent to those initial announcement display cars, as we call them, the dealer then orders pretty much what he wants, and we endeavor to produce the unit just exactly that way.

Q. Now, the forms that he uses to order his vehicles after you have established this projection that you have

referred to, are those reviewed by you, or by the district managers, or both?

A. Well, the district manager after merely consulting with the dealer—many times he leaves at that point, and merely sends in a copy of the projection, or estimate to the car distributor to let him know that he at least has been to that dealership, and to advise the car distributor that a projection has been completed at that point.

Q. Is this projection for a specific period of time?

A. It is for the immediate month coming up, and for two months beyond that period. It is for a ninety-day period.

Q. I take it that these are negotiated by the district managers generally at the dealer's place of business?

A. The transaction takes place in the dealership.

Q. Suppose a projection were established by a conference between a district manager and a dealer, and it was reviewed in your office, and it was found to be below the standards that you as zone manager felt prevailed, what would be your procedure?

A. Well, the first thing, inasmuch as it is an estimate, [fol. 209] and represents the thinking of a dealer as well as a representative of our organization, in my particular case we would let subsequent events prove whether the estimate had been good or bad, and then counsel with the dealer in making future estimates so that they might be more accurate.

Q. Well, if a dealer consistently failed to meet this projection over a period of time, and was falling consistently below the projection that he and his business manager had generally established for a period of say, six months, is there any specific course of action that you utilize to try to correct that situation at the zone level?

A. Possibly in a situation like that I would call the dealer and the general manager into my office to go over the situation, and endeavor to point out any errors on the part of our people, or the dealer, in arriving at the estimates, and endeavor, as a result, to point out to both the dealer and the district manager the necessity of revising future estimates."

Mr. Riley: May I suggest a correction, Counsel? Shouldn't that be district manager at Line 19 of Page 61?

Mr. Williams: Yes—oh, I don't know. Just a minute. I want to speak to Mr. Barnes.

Off the record.

(Whereupon, there was an off-the-record discussion.)

Mr. Williams: It may be stipulated that the word [fol. 210] "general" at Line 19 of Page 61 may be changed to "district" manager.

Mr. Riley: I will reread the answer commencing on Line 18 then.

"A. Possibly in a situation like that I would call the dealer and the district manager into my office to go over the situation, and endeavor to point out any errors on the part of our people, or the dealer, in arriving at the estimates, and endeavor, as a result, to point out to both the dealer and the district manager the necessity of revising future estimates.

Q. I am interested in the terminology that you have used all day of 'counseling and advising'. Actually, district, zone and regional managers are pretty much the directors of dealers, if they are off base, and if they are consistently not adhering to your standards that are promulgated on a nation-wide basis, or even on a district or zone basis, isn't that a fair statement?

A. I do not think that it quite covers it, insofar as any zone operation that I have had anything to do with is concerned. We have always looked upon a Chevrolet dealer as an independent merchant, handling a product that is of mutual interest to him, as well as to us, and therefore, as a result of handling a product of that character, of necessity many problems and viewpoints would naturally be dependent one upon the other.

Q. Suppose the dealer has fallen consistently below his sales projections, as you have used the term, and he has been advised and counseled to the effect that he should [fol. 211] have more salesmen, and he refuses to add some more salesmen to his sales staff, would your advice and counsel include suggestions that his agency and his dealership might be terminated?

A. No. It has been my experience where sound advice has been given to a dealer, and he fails to follow it, and after a period of time suffers a financial loss, resulting from not following it, that in most cases is proof enough without anything else being necessary.

Q. Since you have been zone manager here, have you had occasion to cancel, or to not renew a dealership in this zone?

A. No.

Q. How many would you say since you have been zone manager here?

A. You are speaking of terminations now from what standpoint? We have many reasons for a dealer being terminated. I just wonder what you mean by your question.

Q. All right. I will confine it to termination by reason of failing to meet sales quotas or sales projections, or failing to comply with other standards with respect to parts, with respect to financial ability, or with respect to used car procedures, or with respect to pricing policies, and so forth.

Q. Those that you have asked about, I have had none that I have terminated for that reason.

Q. What have been the reasons for the termination or failure to renew dealer franchises since you have been here?

A. Well, one, of course, is death on the part of the [fol. 212] dealer, and the necessity of acquiring a new dealer; some requested termination because of the fact that they were just poor business people, and could not make a satisfactory return on their capital, and they decided that perhaps it would be best to get out of the business, and asked me to find them a replacement dealer.

Q. Now, you stated that you had some who requested to be relieved of their franchise, because they didn't have the capital, and so on and so forth. Could you give me the names of some of those, and their locations?

A. Yes,—there was one recent one. Do you want the name of the dealer that went out?

Q. Yes.

A. Well, one comes to mind, the Murphy Motor Company at Pasco, Washington. I can give you the location of

another one, but I cannot think of the name of the dealership that was in there before, but the location is at Waterville, Washington. By checking my records I can give you the name of the organization.

Q. In other words, the dealer previous to one that is there now?

A. That is correct.

Q. All right. Any others? I would like to have as many as you can recall at this time.

A. There was the Mackay Chevrolet Company at Prosser, Washington. There was the Foster Chevrolet Company at Twisp, Washington. It will be hard for me to recall any more without reference to my records.

Q. That is all right for now. You stated that you had [fol. 213] some that were cancelled because the location was considered inadequate or poor. Can you give me the names of those?

A. There were no dealers canceled because the location was considered inadequate or poor.

Mr. Williams: Just for the purpose of clarifying that question, could it be stated this way, that these are cases that you are asking for in which the dealer had made no request for termination? I understand that that is what you are after. It does not come up in the way of a dealer's request. Do you understand it that way?

The Witness: That is the way I understand it, where the dealer had made no request, but where we felt that economically we should not or did not need representation in that location.

By Mr. Riley:

Q. Okay.

That is all right. We will pass it now.

A. By reference to my records I can give that to you.

Q. Well, I think I would ask for that by way of interrogatories."

Mr. Riley: Lines 1 through 5 can be deleted?

Mr. Williams: Yes.

"By Mr. Riley:

Q. Now, with reference to pricing procedure, will you describe the procedures for establishing retail prices and administering retail price schedules within your zone organization?

A. Let me say that we do not administer any prices whatsoever. Suggested list prices are furnished to our dealers as a part of their agreement at the introduction of each new model, and the dealer is furnished that di-
[fol. 214] rectly from Detroit. Those prices are, as I say, prepared in Detroit, and are given to the dealer as a suggestion for him to follow. We do not do anything at the zone level to administer any prices."

Mr. Riley: Now, if Your Honor please, I would like to refer to Exhibit No. 6, which is a form of price list, which is promulgated, and is a price list similar to that referred to at this point in the testimony.

Mr. Williams: Exhibit No. 6 is a typical price list.

Mr. Riley: Thank you.

"Q. Do you have any company policies with respect—let us say, to use the vernacular, packing or discounting list prices?

A. We have none, other than we consider them to be unethical.

Q. If a case of price packing is called to your attention, or activity of that nature on the part of one of your dealers, what would be your procedure?

A. Well, based upon the circumstances we might discuss the matter with the dealer, and counsel with him as to whether or not it was the wisest course to pursue, and if the dealer did not agree with us, why there would not be very much that we could do about it.

Before I forget it, I can give you one of the dealers where the point was discontinued—Naches, Washington, is another one."

Mr. Riley: Then we can delete from Line 8 down to cross-examination on Line 18 of Page 67?

[fol. 215] Mr. Barnes: Delete that, too, in view of the fact it was corrected later.

Mr. Williams: That may be deleted, too. You can just continue your examination at Page 68 on Line 8 if you want.

"Q. I want to ask you, Mr. Snyder, with respect to the procedures for establishing franchise areas. Under whose jurisdiction is that responsibility vested?

A. You are speaking of an area or zone of influence?

Q. A zone of influence, or franchise area.

A. Well, it was established in the zones in which I have worked many years before me. I assume it was established at one time by prior zone managers and regional managers, many years back.

Q. You indicated here earlier that you had had several occasions to cancel dealerships or not renewing the Direct Dealer Selling Agreements because of territorial rearrangements, or the inability of an area to support a dealer, or some such reason.

A. Well, as a result of actual experience over the years, operating in a zone you become familiar with the individual dealer markets to the point where, due to shifts in population, and other economic factors, it may not be feasible to maintain representation, whereas representation may have been very appropriate in prior years there. It may be an area where the profit opportunities for the dealer do not exist that may have existed there, say, ten or fifteen years ago. In other words, an evolution of the business conditions sometimes causes that decision to be made.

[fol. 216] Q. Is it Chevrolet's policy to try to maintain strong financial dealers in each area?

A. One of our basic objectives is to have a strong dealer organization financially.

Q. In the matter of selection of dealers, would you indicate generally what criterion you, as a zone manager, follow in selecting a dealer for a franchise area that is open for one reason or another, and requires a new dealer?

A. The major considerations are, first, the applicant's business background; first—let me say, the first thing would be naturally his business background; his experience in the automobile business; his success in the operation of any previous business enterprises that he may have been connected with, and, of course, the credit standing of the individual with reference to his ability to make an investment.

Q. Yes. Now, the procedure for financing these dealers, when it is used—you indicated that there was one that you knew of since you have been zone manager here that was financed by Motors Holding Corporation?

A. Yes.

Q. Could you give me his name?

A. That is the Kluge Chevrolet Company in Bremerton, Washington.

Q. Is that incorporated?

A. Yes.

Q. Could you describe the general procedures by which this dealer's financing is conducted by Motors Holding Corporation?

[fol. 217] A. Generally, of course, it is a corporation that is set up whereby the operator makes a minimum investment of 25% of the required capital, and the other 75% is supplied by Motors Holding. An agreement is then entered into whereby the operator has the privilege, over a period of time, of acquiring the 75% interest from Motors Holding, to where he becomes the sole stockholder in the corporation.

Q. Who actually holds this 75% of stock—or does someone in General Motors hold the stock of the dealer corporation?

A. Well, briefly, the corporation is formed with two classes of stock, an A stock and a B stock, the one stock having voting privileges, and the other being merely for investment purposes, and the agreement briefly is that the operator acquires the investment type of stock, and when he has acquired a sufficient percentage of that to where it represents all of the voting stock, that then he also acquires the voting rights. The dealer has no voting rights until he acquires 100% of the stock.

Q. Could he acquire the voting rights to the majority of the stock with half or less than half of the original investment by Motors Holding Corporation outstanding?

A. Inasmuch as their installations over the past—I would say recently, over the past five years or more—have pretty much been predicated on individual circumstances, I do not feel qualified to answer that. I do not know.

Q. Is there anybody in your zone organization who represents Motors Holding Corporation, with the dealer who is financed by this procedure?

[fol. 218] A. No.

Q. Who does represent General Motors in this type of dealer financing arrangement?

A. That is handled by a representative who has the title of branch manager, I presume—I recall—and his headquarters are in San Francisco—the Motors Holding Division in San Francisco, California.

Q. When you select a dealer who you feel is otherwise qualified, but he has insufficient capital, are you responsible then for recommending this particular dealer to Motors Holding Corporation, who has the final say on that?

A. Not necessarily. We endeavor, if at all possible, to have the applicant personally endeavor to get local financing, either through a bank or some other source, rather than using Motors Holding.

Q. Actually, what you are doing through the zone organization that you have is developing your sales record and your sales volume by organizing, training, and soliciting dealers to do more of a job at a retail level, is that a fair statement?

A. We are principally persuading, as effectively as we can, the dealer to do the things that we know from the experience of other dealers to be the things making them successful.

Q. Is it the duty of the representative at the district level to build up the products of Chevrolet within his district?

A. Perhaps as an end result that is true, but it is principally to develop a dealer, and make him strong, and by [fol. 219] making him strong, then any benefit that might accrue to us from that standpoint.

Q. One point on fleet sales—do you have any jurisdiction or control over the conduct of fleet sales by your dealers within your zone?

A. As a direct contact?

Q. Well, yes.

A. No. We have a department head, operating under the regional office, who has an office in my zone, and who is a zone fleet manager.

Q. If a fleet sale is accomplished in a dealer area, is that dealer entitled to the bonus at the end of the year?

A. He receives a bonus on fleet business, the same as any retailer does, but he has to sell it.

Q. If it comes out of his area?

A. Yes, but he has to sell it.

Q. If a Police Department somewhere asks for bids on, say, 25 Chevrolets, does the dealer have the opportunity to make a bid on that arrangement at all times, or is he required to report opportunities for fleet sales to the General Motors Corporation?

A. No. It is entirely his prerogative to make a bid on that business. He may contact the zone office, but only for the purpose of determining that if he is successful in getting the bid, would the merchandise be available from us.

Q. But he does make that contact with respect to a fleet sale?

A. He makes that entirely on his own initiative.

Q. Suppose there is a fleet opportunity on a government [fol. 220] project within a particular area, do you have cognizance of, or do you report such opportunity or opportunities to this fleet sales office representative, or whatever his title is?

A. Our zone fleet manager is on the mailing list of all governmental agencies of the state.

Q. You do have a zone fleet manager within your zone?

A. Yes. He works under, as I say, the regional. However, he does make certain reports to me.

Q. Does he office with you at the present time?

A. He is headquartered here at the present time.

Q. Has this fleet sales manager arrangement existed back to 1948?

A. Yes, we had fleet managers back to that time, yes.

Q. Just for a moment on the matter of selection of dealers, Mr. Snyder. Taking the Seattle area as an example, who has the control for determining whether a new dealer will be added to the existing number of dealers, or whether the existing number should be reduced, or establishing the number of dealers that will be maintained in a given metropolitan area?

A. Well, it starts with a recommendation by me to my regional manager, who, in turn, makes a recommendation to the central office, and the final decision is made in Detroit.

Q. Could you indicate the reasons for the policy of allowing a different price bonus to dealers located in metropolitan areas, than to dealers who are located in small towns or rural areas?

A. Yes. From my experience I have been told many times [fol. 221] that the bonus as originally conceived was intended to assist dealers in metropolitan areas to overcome the losses that they were sustaining back in the days of the 1930's and the 1940's in the sale of used merchandise, and because of the fact that their losses were greater in metropolitan areas than they were in single city or rural markets, Chevrolet felt that the metropolitan dealers were then deserving of more assistance, dealer-wise, than a dealer in a single city town."

Mr. Riley: If the Court please, I would just like to refer briefly to the Facts Stipulation for an explanation of the difference in bonuses paid by General Motors to dealers, and in Paragraph XII at Page 9 of the so-called Facts Stipulation, which in turn quotes from the Dealer Selling Agreement and from the Dealer's Price List, a different allowance is made. For instance, beginning at Line 25 of Page 9 of the Facts Stipulation it provides that the following bonuses will be allowed: "1. To all Dealers located in cities or towns where Chevrolet has only one dealer—$7.50 per unit." Then: "2. To all Dealers located in cities or towns where Chevrolet has two or more dealers—$12.50 per unit." Then: "3. To all Dealers in the following Metropolitan Areas"—naming them—"$17.50 per unit."

"Q. Is this considered to be an actual incentive to production in terms of sales?

A. As I recall, it was never originally presented to the dealers in that way. It was ostensibly an assistance, as I say, to offset their losses in their used car department, [fol. 222] and I have never heard any other viewpoint given by us other than that. However, as the years went by and the amount was paid, many different interpretations, not

only on our part, but on the part of dealers, were placed on it."

Mr. Riley: We can delete from Line 16 to the end of Page 75, and Lines 1 to 7 on Page 76.

Mr. Williams: All right.

Mr. Riley: That is calling Mr. McCaffrey as the next witness.

Mr. Williams: All right.

DEPOSITION OF EDWARD A. MCCAFFREY READ INTO RECORD

"Q. What is your full name, and will you spell your last name?

A. Edward A. McCaffrey—M-c C-a-f-f-r-e-y.

Q. Where you do reside?

A. 1258—112th Northeast, Bellevue, Washington.

Q. Where are you employed?

A. At the Chevrolet Motor Division, Seattle Zone, 709 Northern Life Tower.

Q. How long have you been employed in your present capacity?

A. About a year and a half.

Q. What was your employment prior to this period—prior to your present capacity?

A. Well since 1940 I was in Oakland, California, in the Accounting Department, and I moved to Portland in 1946, in the Parts Department. In 1947 I was in Walla Walla, Washington, working out of the Portland Zone, through 1950, when I moved to Eugene, Oregon, working out of the Portland Zone. I transferred from Eugene to Yakima, Washington in 1951; from P & A representative in Eugene [fol. 223] to District Manager in Yakima.

Q. When you were in Walla Walla, attached to the Portland Zone, what was your capacity at that time?

A. Parts & Accessories representative.

Q. Parts & Accessories representative?

A. Parts & Accessories representative—P & A.

Q. What district or area were you assigned in the Walla Walla District—what geographical areas were included in that district?

A. You would go from Walla Walla to Lewiston, and then from LaGrande to Union, Oregon—to the Union, Oregon area, and then the Pasco area of Washington.

Q. And then in 1951, when you were assigned to Yakima, you were there to what period?

A. From 1951 to the fall of 1953.

Q. What areas were included in the Yakima District?

A. That would be Pasco to Naches in the Yakima Valley; Ellensburg and Cle Elum, and then north from Wenatchee to the Canadian Line.

Q. Did you maintain an office in that area?

A. None.

Q. What office work were you required to conduct, and if so, where did you conduct that?

A. We did all of the bookwork that we had to do at home.

Q. Did anyone assist you in that capacity? I am speaking in terms of 1951 to 1953, when you were in the Yakima area as the Yakima District Manager.

A. No.

Q. Was there a Seattle office in the State of Washington [fol. 224] at that time of the Chevrolet Motor Division?

A. There was a Seattle office that I knew about.

Q. Was that a part of the Portland Zone organization?

A. Yes, it was.

Q. Did you report to the Seattle office at that time, or to Portland?

A. Just to Portland.

Q. Now, would you describe just in general your responsibility as the Yakima District Manager when you held that title or were employed in that capacity from 1951 to 1953?

A. Well, my number one responsibility would be estimating the dealers' requirements, based upon a 30, 60, and 90-day basis.

Q. How were these dealers' requirements compiled and worked out during this period of time?

A. They were a firm figure out of the Portland Zone office that we worked into the dealers' estimates.

Q. Was that in terms of a sales quota?

A. It was not at that time, because at that time they would take all that they could get.

Q. In other words, at that time it was a matter of sort of rationing, I take it?

A. That is right. We had a certain figure, and we had to come out exactly to it.

Q. Did you have any responsibility in approving dealers' orders, or helping in preparing dealers' orders for automobiles during that period?

A. We assisted them in making up their orders, to fill in with our allotment, so that they would balance out on [fol. 225] the total.

Q. Did you have authority to, or did you have to approve in any way a dealer's order?

A. No. The acceptance was in Portland. We did the physical assistance on the order blank for color and whatnot, but the acceptance of the order was in Portland.

Q. I take it that all of your time at that time was required in the State of Washington—I am speaking from 1951 to 1953?

A. Yes. At that time I had no dealers while I was in that particular district, in any other state, except the last part of it—in 1953.

Q. How do you measure your performance in terms of reporting your district activities to your zone office?

A. Well, we have one boss in the zone, and I would say that everything funnels from the zone manager in any Chevrolet operation.

Q. Do you have certain reports that you are required to file with him?

A. I would say that all the reports that we file would be subject to the zone manager—yes. He starts them off.

Q. Do you have a sales quota in your district—assigned to your district?

A. Well, not at this particular time—no.

Q. None now?

A. In Parts & Accessories we have projections in my particular job—yes.

Q. Is this one of the measures of your performance then as compared with other District Managers, say, now in the [fol. 226] Seattle Zone?

A. Well, I am not a District Manager now.

Q. Excuse me. I have to go back. What is your present capacity? I have forgotten it.

A. Assistant Parts & Accessories Manager.

Q. I see. I will ask you with reference to the period of 1951 to 1953, when you were District Manager, just what your dealings with individual dealers consisted of, aside from establishing a sales quota, or objectives, or allocation of automobiles?

A. Well, we have a number of different departments in the Chevrolet set-up. The District Manager is responsible to carry out the physical work of putting those things into effect with the dealers. The business management department, their number one objective is the preparation of their financial statements, their deviations and condensation of them,—what we call GSP 634.

Q. What is GSP 634?

A. It is a condensation of the financial statement which gives you gross figures and per car figures.

Q. Do you assist the dealer in any other manner during this period?

A. Not from a business management standpoint, with the exception of maybe regarding the accuracy and the deviations in the report.

Q. Did the Chevrolet Motor Division, or the General Motors Company conduct any sales promotion contests during that period that you recall?

A. Most of the promotion then was done through the [fol. 227] Parts & Accessories Department, because of the fixed allotment. There was no sales promotion tool that you could use in the other.

Q. What type of promotional program was undertaken during this period by the Parts & Accessories Department at the district level?

A. Well, each dealership was given an objective to meet, and that would be determined based on the percent of the objective attained.

Q. What type of award was made to a winner in that type of a contest?

A. There were pay-offs at Portland, which consisted of dinners and entertainment. I think there was one at Seaside and Sun Valley.

Q. Do you administer these programs at the district level, or would you as District Manager administer these programs and contests at the district level?

A. Carrying out at the zone meeting, yes. We usually had a meeting in Portland, and from there we would take the program into the field, to our dealers in our district.

Q. Regarding the use of promotional literature by the dealers in your area, do you distribute this type of literature for the use of the dealers, or do you assist them in its use?

A. Yes. The distribution is usually out of the zone office of any promotional material, and we would follow up on the promotion of that material.

Q. When you follow up on the promotion of that material, suppose you have got a dealer that has the material, [fol. 228] and is not using it, what is your procedure as a District Manager?

A. We point out to him the value of the promotional material, and, number one, additional profits to him.

Q. Well, you actually sell him on the use of the material, in order to stimulate his volume, and stimulate yours at the same time. Is that a fair statement?

A. I would say that we were promoting his overall good, and in turn, ours.

Q. Do you handle customers' complaints—retail customers' complaints of malfunction and misrepresentation by dealers, and that sort of thing?

A. As a last resort we do contact the owner if the dealer cannot sell him himself.

Q. Is that a regular part of your function—I am thinking in terms of your capacity there as a District Manager in 1951 to 1953 in Yakima.

A. Service is one of their responsibilities—yes.

Q. Do you as a District Manager have any responsibility as far as the performance of a dealer's Parts and Accessories Department is concerned?

A. At this particular time the Parts Department was under the P & A rep, and that was his direct responsibility, and in answer to the service part of your question, that would be a District Manager's responsibility at that particular time.

Q. Anyway, in the period from 1951 to 1953, the District Manager was responsible for seeing that the Service Departments were maintained in accordance with your dealer [fol. 229] agreements—is that what you say?

A. That was our responsibility—yes.

Q. Are you engaged in any other sales activities as a District Manager?

A. Promotional material.

Q. Suppose in Yakima County the Sheriff's Department wants to purchase some automobiles. Is that strictly within the dealers' province, or do you prepare bids, or do you assist dealers in preparing bids for, say, police departments, and for taxicab companies, and the like of that?

A. We stay strictly out of pricing anything for anybody. If it was the sheriff, it would be the Chevrolet dealership of his choice that he wanted to deal with in Yakima County.

Q. Suppose as District Manager at Yakima you became aware that some company in Yakima County was going to purchase four or five automobiles, would you have any responsibility for seeing that a bid was made?

A. We would promote the dealers that happened to be, say, in that area, to bid on the deal—yes.

Q. You would have no authority to enter into any negotiations, or take part in the bidding yourself?

A. None at all.

Q. Do you have any responsibility, as far as fleet sales are concerned, as far as coordinating orders for fleets by dealers, for fleet sales?

A. We have nothing to do with the bids on the orders for fleets.

Q. Who handles that in the Chevrolet Motor Division?

[fol. 230] A. The dealer handles the order taking from the fleet user, and, in turn, the order is placed with our car distribution department.

Q. Did you in 1951 to 1953 have any dealers who were being financed by Motors Holding Corporation, or any other division of General Motors?

A. We had one who was financed by Motors Holding Corporation at that time.

Q. Did you have any activities or any responsibility as District Manager in helping to select dealers—replacement dealers, or new dealers?

A. That was one of our responsibilities—to always have dealer prospects, and if there was an open point for replacement, we would submit applicants.

Q. As a District Manager did you actually conduct interviews with applicants?

A. No. That was all done by zone management in Portland—usually the Zone Manager did that.

Q. How did you acquire the list of prospective dealers?

A. At that time we had applications from dealers interested in the financial set-up of a Chevrolet dealership that we submitted.

Q. If a dealership became open, let us say in Prosser, and the Zone Manager had a dealer applicant for that dealership, would you be the one to interview them, or investigate their background, to see if they would be capable of handling the dealership?

A. No. We did the paper work on the application, and from there we were instructed at that time to turn it [fol. 231] over to zone management.

Q. As far as you know, is the same procedure generally followed at the present time?

A. Yes, it is.

Q. Could you give me the name of the dealer whom you mentioned earlier, who was financed by Motors Holding Corporation when you were District Manager in Yakima?

A. Fred Bezley, in Toppenish.

Q. Do you know whether he is still in business?

A. Yes, he is."

Mr. Riley: I had marked here, Counsel, for your consideration, to delete from Line 15 at Page 86 to Line 19 of Page 87.

Mr. Barnes: I think we want to include that.

Mr. Williams: Let's read it, Counsel.

"Q. Would you describe the general arrangement by which he was financed? Who had the responsibility for administering that arrangement?

A. Motors Holding Corporation.

Q. Do they have a representative in the zone or region?

A. I think that they have a representative in the region, or probably a representative in that particular area.

Q. You mean that they would have a representative in Toppenish?

A. Well, he would not be in Toppenish. He would probably be in Portland at that time, or it could be Seattle. I am not sure. We do not get into that.

Q. Was he incorporated, do you know?

[fol. 232] A. Yes. Fred Bezley Chevrolet, Inc.

Q. When you were Parts & Accessories representative in the Walla Walla area, do you know any that were financed at that time by Motors Holding Corporation?

A. No. That is the only one that I ever ran into.

Q. I want to inquire as to the activities in actual sales training and sales promotion that you conducted at the district level. When you were District Manager in Yakima from 1951 to 1953, did you actually engage in activities in sales promotion or sales training?

A. No, not as a District Manager.

Q. How about as Parts & Accessories representative, when you were in that capacity in Walla Walla?

A. Most of them—when you are referring to meetings and schools—they are handled at the department head level.

Q. You mean at zone level?

A. Right. They would either be held in Portland, or a meeting in the headquarters town, by the department head.

Q. Will you describe the procedure, and we are still talking of the period when you were in the Walla Walla District as Parts & Accessories representative. When you visited a dealer's place of business, what was your procedure, and what did you do in the ordinary course of business?

A. Well, from the promotional angle of the sale of Parts and Service, we would recommend that he have, number one, a sound advertising program, and we would want him to get the merchandise in there to back up the advertising program, and, of course, from a service angle he should have the manpower to back up the people that [fol. 233] come in there to have work done—he should have the manpower to do the work, and to train them.

Q. Do you actually train new parts men in the dealer's location?

A. No, that would not be our responsibility. We have schools for that.

Q. You would look his place over and criticize it if you felt that it deserved to be criticized?

A. Yes.

Q. What do you think the objective presently is of a Parts & Accessories representative—well, let us take the period when you were in Walla Walla, in 1949. What did you consider the objective of the Parts & Accessories representative to be at that time?

A. Well, to see that each dealer had an adequate inventory of Chevrolet parts on hand, so that he could service Chevrolet right.

Q. How was that determined and measured, whether or not he had an adequate inventory on hand of parts for servicing a Chevrolet?

A. It is usually based on the number of cars operating in a given territory. In that way you can compute what his inventory should be, based on his rate of sale.

Q. If a dealer was not using the proper amount of parts indicated by the amount of Chevrolets operating in his area, what procedure would you, as Parts & Accessories representative in that area follow?

A. You could prepare a statement and show him that on a Parts & Accessories basis he was not getting his [fol. 234] share of the Parts & Accessories business.

Q. What would you do in order to correct that situation?

A. Well, we have a pad that is divided into a six-months' period, and a year's period, showing what the turnover should be on these parts, compared with his turnover if he keeps records not only of parts bought, but the amount of money he has invested in that department.

Q. Now, did you have a similar sales objective or volume objective that you were expected to meet for your district?

A. We had an objective, yes.

Q. Did you have to submit written reports which reflected the volume of parts handled in that district?

A. The reports came from the dealers, off of their financial statements. That would be the way that the zone got their information.

Q. Did you have any other occasion to meet with your dealers than at their place of business—I am going back to your capacity as District Manager in Yakima from 1951 to 1953?

A. We had dealer meetings in Portland.

Q. How frequently were they conducted at that time?

A. Usually on a bi-monthly basis, with the exception of maybe the summer months.

Q. How often do you, as a District Manager, visit the dealer's place of business?

A. In most cases, once every month, and sometimes in the case of the larger dealers, or on specific problems, maybe twice a month.

Q. How about as Parts & Accessories representative when you were in the Walla Walla area?

[fol. 235] A. You could make the rounds there and hit them at least once a month.

Q. Aside from the zone meetings which you stated were generally held in Portland in the period from 1951 to 1953, were there any other area meetings held in the State of Washington?

A. We had at that time a few meetings in the field by different department heads on some specific promotion, introducing something new, or some meeting that they had been instructed to hold in our headquarters town.

Q. As Parts and Accessories representative in the Walla Walla area, on what occasions would you meet with the dealer other than at his place of business?

A. At the dealer meetings in your headquarters town, and in your dealer meetings in Portland.

Q. You have a headquarters town in a district, is that the idea?

A. Yes.

Q. How frequently would those meetings be held by your Parts & Service representative, or by you as Parts & Accessories representative?

A. Well, not more frequently than three times a year, I would say.

Q. And what would be the program at a typical meeting of that kind?

A. The department head would bring to the meeting the program submitted by the zone office. Of course, in the parts department you are constantly changing, and bringing to the attention of the parts managers the things [fol. 236] that we put out by mail that can be of service to them in Parts & Accessories.

Q. Who would absorb the cost of those meetings?

A. The Chevrolet Motor Division usually footed the bills.

Q. Did the dealers attend those meetings regularly?

A. Well, they were invited to attend, but most of all the P & A managers would be there.

Q. Would you say that every dealership was represented at those meetings?

A. We strive for 100%, but we don't always get it.

Q. In the Direct Dealer Selling Agreement which we have previously referred to, and which I will refer to from time to time as an exhibit—may it be so stipulated, Counsel?

Mr. Williams: Yes."

Mr. Riley: Line 5, Page 92. That is now Exhibit No. 8, if Your Honor please.

Then we can delete from Line 6 to Line 9; is that all right?

Mr. Williams: What is that again?

Mr. Riley: I have made reference to deleting 6 to 9 at that point.

Mr. Williams: Yes.

"By Mr. Riley:

Q. That Direct Dealer Selling Agreement provides as follows in paragraph 17, headed: 'Sales Staff'—'Dealer shall maintain a staff of salesmen, and a selling and customer relations organization adequate to take care of the sales potential of the area described in Paragraph First,' and my question with respect to that requirement is: By [fol. 237] what procedure do you, as a District Manager, ascertain whether or not the dealer has properly developed the sale of Chevrolet motor vehicles in his area?

A. We have certain guides that we use. Primarily they are your registrations, whether they be Polk, or the local county, where you can get a more current picture.

Q. Well, supposing you have determined that a dealer in a given area in your district has not properly developed, in your opinion, the sale of Chevrolet motor vehicles and chassis in his franchise area, what steps do you follow to build up his sales, or to overcome that problem?

A. Well, number one, I think that he should at least shoot for the average of all dealers, and there would be a difference there between his discrepancy and the average, and show him what the average dealer is making on a per car basis, and through a statement show him where he could make more money if he would just come up to average.

Q. Do you have any other statements that you use? Have you had occasion, for instance, to suggest that if he does not bring his quota up, or meet his sales objective, he may lose his franchise?

A. We never use that.

Q. What means do you take—I mean, other than suggesting that he can make more money, what methods do you use to help him build up his quota?

A. If you give a man the total figure of cars sold, and show him what the average is, and he is below that average, he is going to have to have the manpower to do that job, and he should be encouraged to have salesmen to do the job.

[fol. 238] Q. What methods did you use, say, in the period from 1951 to 1953, to determine whether or not a dealer was maintaining an adequate staff of salesmen, as required by your Direct Dealer Selling Agreement?

A. During this period when you have a fixed allotment, manpower should not be a problem if a dealer is getting rid of all of the cars that he gets from us. And if he had just enough salesmen from the old manpower, it would just be a matter of keeping the old salesmen on as a nucleus.

Q. During that particular period, this part of the Direct Dealer Selling Agreement was not a particular problem, and was not particularly administered during the pre-Korean War era, was it?

A. I would not say that that was any particular problem.

Q. Before the Korean War, what standards were used to determine whether or not a dealer had an adequate sales staff?

A. There was a short period prior to this Korean War, where we were getting to the point where there was not a fixed allotment, and if the cars were available, and the dealer had come through, and maybe put on some more men, and could handle it properly, he would get the cars, but the zone office would usually be the determining factor whether he got the cars, and if he had the manpower to handle them properly.

Q. Once more, your present capacity is what?

A. Assistant Parts & Accessories Manager."

Mr. Riley: I think we can delete from Line 20 to the end of Page 95.

[fol. 239] Mr. Williams: Yes, that is right.

Mr. Riley: Then the witness Stanley C. Hobson, beginning at Line 7.

DEPOSITION OF STANLEY C. HOBSON READ INTO RECORD

"Q. What is your name?

A. Stanley C. Hobson.

Q. What is your present address?

A. My home address?

Q. Yes.

A. It is Bellevue, Washington. The street address is 10055 Northeast 31st Place.

Q. By whom are you employed?

A. By the Chevrolet Motor Division.

Q. Of General Motors?

A. Yes, sir.

Q. And where is their office?

A. 709 Northern Life Tower, Seattle.

Q. What is your capacity there?

A. I am Zone Business Manager.

Q. How long have you been in that capacity?

A. Since September 1 of 1956.

Q. And what was your employment just prior to September 1 of 1956?

A. I was District Manager, headquartered in District No. 2, which is north of Seattle.

Q. Where were you residing at that time?

A. I was residing at Mountlake Terrace.

Q. How long were you there?

A. I was there from 1955 until—that would have been around the first of June of 1955, until approximately June [fol. 240] 8, 1958.

Q. And where were you between the years of 1949 to 1953, and in what capacity?

A. Well, in 1949 I was in Yakima, Washington. That was our District No. 7 at that time, and in the fall of 1950 I was transferred to Tacoma, which was then District No. 6.

Q. And how long were you there?

A. I was there until I was transferred to District No. 2, as I mentioned, and that was in the spring of 1955.

Q. In each of those places you were District Sales Manager?

A. I was District Manager.

Q. District Manager?

A. Yes.

Q. What is the average number of dealers assigned to these districts in which you have been located?

A. Well, they range all the way from 28 or 30 down to approximately 12, depending upon the way in which they were situated or set up.

Q. Have you always been employed by the Chevrolet Motor Division of General Motors?

A. You mean, have I had other employment than that?

Q. Yes.

A. Yes, I have had other employment.

Q. Have you ever been employed by any other division of General Motors?

A. I never have."

Mr. Riley: I was proposing to delete Lines 8 to 22, and I am going to put in the answers of interrogatories which makes that clear, but—

[fol. 241] Mr. Williams: (Interposing) Let's consistently read them, if we can.

Mr. Riley: All right.

"Q. In the period of time that you have been District Manager, and I am thinking particularly of the period when you were in Yakima, and in Tacoma, where were your payrolls processed?

A. They were processed in Oakland, California, and sent to the Portland Office.

Q. Do you know whether or not Social Security contributions were paid to the Federal Government while you were District Manager?

A. You mean Federal Old Age Benefits?

Q. I have reference to Social Security contributions, and Unemployment Insurance.

A. I cannot say as to that. Unemployment Insurance may have been included in that category, along with—it may have been included in that Federal Old Age Benefit, or something like that.

Q. Now, as Zone Business Manager, do you prepare the payrolls for the personnel attached to the zone office here? A. No. I have nothing to do with that.

Q. What is the description of your job at the present time—your responsibilities as Zone Business Manager?

A. My responsibilities are quite a number, but primarily I am responsible for the submission to us of financial information, mostly in the form of financial statements from the dealers, and the preparation of composites, which are a total of those, and the averages of those, which we, [fol. 242] in turn, use for comparative purposes.

Q. During your service as a District Manager in the State of Washington, have you had occasion when you were required to inform a dealer that he was not meeting the standards required by the Chevrolet organization, and unless the conditions were corrected, he might lose his franchise?

A. Well, I was not authorized to make a statement like that, I will say that, and I cannot recall any instance when I did make that statement, as such, except possibly by inference. There is no definite statement that I can recall making in that regard."

Mr. Williams: Pardon me, Counsel.

Off the record, please.

(Whereupon, there was an off-the-record discussion.)

Mr. Riley: Let's delete Line 20 and the first three words of Line 21 of Page 99, Mr. Reporter.

"Q. As District Manager, during the period of time that you held that position in the State of Washington, what did you consider to be your responsibility, and the objective of your position?

A. When I was a District Manager, basically I would say my responsibility was to do what I could to maintain and to improve the selling ability of the dealers so that they could do a good job, although in a non-competitive period of time, and improve for a competitive period so that they, in turn, would be able to get their share of the market, and be accordingly prosperous.

Q. In the competitive periods of time, is it a fair state- [fol. 243] ment to say that your objective is to increase the gross volume of sales of Chevrolet products in your district?

A. Well it would depend upon what the volume was, actually. If the volume was at a maximum point, why there would not be any point in trying—

Q. (Interposing) Do you have a stated objective in terms of sales that you are trying to reach as District Manager in a competitive period?

A. In a competitive period the objective is to get all the dealers to do a reasonably good job, rather than to achieve it by a certain few. In other words, to have a balanced operation, so to speak.

Q. Is your performance as District Manager measured by the percentage in which you achieve this sales objective, or fail to achieve it?

A. From my past experience, I would say it is more than that. The District Manager is regarded by the way that he does his work—the way that he goes about it, and what he accomplishes on a long-range basis, rather than just on a sales record, or something like that. The responsibility is tied down. I think primarily a person's actions, and the way he goes about the job count more than anything else.

Q. Of all the things on the list of things that you are trying to achieve, isn't it fair to say that the number one

thing is a high sales volume, or as high a sales volume as possible?

A. I would say that having the dealers in a position to be able to get good sales volume, yes, that would be [fol. 244] important. However, you would have to make a distinction between the period of time when merchandise is fully available, and when it is not available.

Q. I appreciate in a pre-war period, when you have a seller's market, so to speak, you have a limited business, and in competitive periods you are trying to maintain a maximum volume of sales in your organization.

A. I think that that is true in every kind of a selling business. It would not be confined just to Chevrolet.

Q. And if you have a dealer who has not measured up to the standards, or to the sales objective that has been established, are you not accountable for an explanation of what can be done, or what should be done, or why he is not meeting that objective?

A. If they are things that would be within my control, I might feel that I was accountable for them—yes.

Q. If you have a given dealer in your district, and you are District Manager, and this dealer is not achieving his sales objective as it has been established for the period of time in question, would you not be required to submit a report as to why he has not met that objective?

A. I might or might not submit a report, depending on the circumstances.

Q. What procedures do you follow when you are confronted with that type of situation?

A. At the present time, you mean?

Q. Yes.

A. Well, it would be to analyze the dealer's operation, and try to determine what is causing him not to achieve his [fol. 245] sales objective.

Q. And would you not do the same thing—follow the same procedures in the period from 1951 to 1953?

A. Not necessarily, because merchandise was not available in that period, and if a dealer's deficiency was caused by lack of profit, due to unavailable merchandise, why there would hardly be any reason to make a report on a dealer on that basis.

Q. Then in competitive periods—I am thinking in terms when it is possible to produce automobiles, and more automobiles than there is a demand for, what procedures would you follow as a District Manager, to see that he did achieve a stated sales objective?"

Mr. Riley: That question can be stricken, and we can strike Lines 1 through 6 of Page 103 and rephrase the question commencing as stated at Line 7 of Page 103; is that agreeable, Counsel?

Mr. Williams: Yes.

Mr. Barnes: Yes.

"By Mr. Riley:

Q. In the course of your relationship with your dealers in your district as District Manager, in a competitive period of time, is there a sales objective in terms of units of sales, or dollars, or volume of sales or automobile vehicles and trucks that is established for given periods of time?

A. There is no objective as such that I know of, and they are not referred to in that manner. My title was District Manager not Sales Manager as stated in your question.

Q. How are they referred to?

[fol. 246] A. Well, what I am getting at is that one of the main indices that I know of of a dealer's sales objective, if you want to call it that, is what he sets for himself by his own average yearly sales, that is referred to as his planning potential, and either the dealer achieves his planning potential or he does not in one year, and that is an index as to whether he is doing a good job or not.

Q. Is not the planning potential worked out jointly by the District Manager or Zone Manager and the dealer?

A. Well, it is established in combination of the dealer's sales, I should say, and the averages of registration in his own zone of influence. I will put it that way.

Q. Let us take this hypothetical situation. You have a dealer in your district, and this particular district has a planning potential established, as a result of the consideration of all this combination of statistics, and he has over a period, we will say, of six months, failed to meet that planned objective, what procedures would you, as a

District Manager, institute and follow to correct that situation?

A. First of all you would have to analyze what is causing him to fall behind.

Q. How do you do that?

A. By looking at the available records.

Q. And where do you do this?

A. As a District Manager you do it at the dealership, I suppose.

Q. What else do you do?

A. Well, after you have determined those things, or if [fol. 247] you can determine those things, why then you offer your advice to the dealer, as to what he can do to correct the situation. It might be personnel, or it might be facilities, or it might be many things.

Q. Have you had occasion as a District Manager to suggest to a dealer that he did not have enough salesmen on his sales staff during a competitive period?

A. Yes.

Q. Have you had occasion to offer assistance to dealers in training their salesmen?

A. I have. I have worked with them on that.

Q. Do you offer assistance to dealers in obtaining other salesmen, or new salesmen to add to their sales force?

A. I have made recommendations if I knew a person was available and wanted to change—yes.

Q. Have you had occasion to help locate a sales manager for a dealer's organization?

A. Yes.

Q. Have you helped dealers organize their used car department?

A. Well, not organize it. I can be helpful in the organization of it, if you want to put it that way. I would not say that I set the thing up for them, or anything like that.

Q. Have you had occasion as District Manager to recommend renewal or modernization of facilities?

A. Would you state that again?

Q. Have you had occasion as District Manager to recommend renewal or modernization of facilities?

A. Yes, definitely.

[fol. 248]. Q. How does a dealer obtain building service from the Chevrolet or General Motors, and I am referring to paragraph 13 of the Direct Dealer Selling Agreement of the Chevrolet Motors Division of General Motors, which provides:"

Mr. Riley: Line 24, Page 105, and again that is Exhibit No. 8, if Your Honor please.

"'Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as a complete working plan, and will be furnished solely as a suggestion.'

A. That is information that is needed by the people who draft the plans back in Detroit, and that is made up by either dealer personnel, or by possibly a service representative, if they are available, and the dealer supplies such information as figures, and perhaps traffic studies, and things of that nature, and as a District Manager I have assisted in making them up. That is one of the things that I have done.

Q. Is this all administered from Detroit, or have you had occasion to have them visit dealers?

A. Have them visit dealers?

Q. Yes.

A. No, I have not.

Q. Have you, and the parts representative, and the service representative, and the used car representative from your zone organization, participated in the preparation of such plans?

[fol. 249] A. I have never participated in the preparation of the plans. I have participated in gathering information that led to the plans, but I have never had anything to do with the plans as such.

Q. But you have had a role in preparing information for that division of General Motors, have you not?

A. Yes.

Q. Is that a Chevrolet agency, or is that a part of the General Motors organization?

A. Frankly, I do not know who makes the plans in Detroit. I do not know whether it is Chevrolet, or an outside agency. I cannot say.

Q. Now, suppose you have this hypothetical dealer that we have been referring to, and despite your recommendations and your analysis as District Manager, he fails, or refuses to comply with those recommendations, and you are in a competitive period, and he continues to fail to meet his planning objective, what would be your procedure as a District Manager?

A. Well, I would not have any procedure as a District Manager under those circumstances, because I would not have the authority to do anything as far as replacement, or anything like that is concerned.

Q. Would you not call it to the attention of the Zone Manager?

A. If he would not do something that he should do to better his organization?

Q. Yes.

A. I certainly would.

[fol. 250] Q. Have you had occasion to do this in your experience as a District Manager?

A. Yes, I have had on several occasions—yes.

Q. On those occasions what procedure was followed, if you know, by the Zone Manager?

A. It would vary. Sometimes nothing would happen at all, and at other times the Zone Manager might talk personally with the dealer, and perhaps effect some change in attitude on the part of the dealer, or something like that, which would correct the whole situation. Sometimes it would be just a viewpoint involved, or something like that.

Q. Going on to dealer and seller relations, in your activities as a District Manager, and I am confining my question to the period from 1949 to 1953, at the time of the showing of new models, what activities would you engage in at the dealer level, with respect to the preparation for the annual showing of new models?

A. Well, that is pretty involved. Of course we tried to encourage the dealer to get his place in good order, and have it spick and span and neat and clean, and have some activities of an unusual nature, which would attract people into his dealership, in addition to having adequate adver-

tising of it, so that the people in his area would know that there was a showing of new models.

Q. Do you actually assist a dealer in making plans for these showings?

A. Well, the dealer is usually provided with a plan book as to things that he should do and can do in order to insure the greatest success possible of his announcement, [fol. 251] and the District Manager would follow it up to see that the dealer had received his book, and if he was doing something about following the suggestions in there, doing some of the things that it is suggested that he can do.

Q. This plan book, is that an annual publication?

A. I think that they send it out every year.

Q. Do the District Managers have a counterpart publication?

A. Not that I know of.

Q. Do you receive written instructions, let us say, at showing time, or prior to showing time, with respect to the procedures to be followed at the annual showing time?

A. That is a part of the advice, yes, only not necessarily written instructions. We have meetings of our organization, and naturally we want the announcement to be a success, so we are encouraged—I mean the District Managers are encouraged to place the importance on the activity that it deserves.

Q. And are you generally successful in obtaining compliance by dealers of the plan book for the annual showings?

A. In most instances we are, yes. There are some dealers who just habitually are not very good operators, and who would not take advantage of an occasion like that, or an opportunity like that, and who do not get their place cleaned up, and do not put up their banners properly, or at all. There are some of those.

Q. I am interested in the sales promotion programs in terms of contests which are conducted by the Chevrolet Motor Division. Do those come within your province as [fol. 252] District Manager?

A. The promotion of the programs?

Q. Yes.

A. No.

Q. I mean, as far as scoring is concerned?

A. In keeping a record of some of the results in the campaign, yes, but not the sales promotion aspect of it at the present time.

Q. Who has cognizance or responsibility for the sales promotion aspect of it at the present time?

A. Well, if it pertains to automobiles—that is, new cars—it would be the sales promotion manager.

Q. Was there a sales promotion manager in the Portland Zone office in the period from 1949 to 1953?

A. I cannot remember when the sales promotion manager was appointed. We didn't have one until sometime in that period, and then there was one, but I cannot recall just when he was appointed, as a matter of fact.

Q. When you were District Manager in the Yakima and Tacoma areas from 1949 to 1953, were there national, or regional, or zone contests conducted with which you were concerned as District Manager?

A. At what time?

Q. In that period from 1949 to 1953.

A. Yes, there were. There was a regional contest that I recall.

Q. Now, were those generally conducted at the expense of General Motors?

A. At the present time?

[fol. 253] Q. Then.

A. As I recall, it was at the mutual expense of Chevrolet and the dealers at that time.

Q. When you were District Manager, how did you determine whether or not dealers had properly developed the sale of vehicles and chassis in their franchise area, as required by the selling agreement?

A. Well, I would say that there were periods of time when it would have been impossible to tell whether a dealer himself had particularly developed sales as such, but if you wanted to obtain some relative information on whether they did or whether they did not, we had R. L. Polk registrations available, which did show what the registrations in the dealer's zone of influence were, but in a period of car shortage, why that did not mean quite so much.

Q. I am interested in the requirement of the Direct Dealer Selling Agreement, paragraph 21, on page 11:"

Mr. Riley: I would like to comment that this again is Exhibit No. 8, which provides—

The Court: (Interposing) Counsel, can't we have a stipulation that the Direct Dealer Selling Agreement, whenever that is referred to, that that does refer to Exhibit No. 8?

Mr. Williams: That will be fine with me.

Mr. Riley: That would be fine, Your Honor. I hate to be repetitive. There again I was thinking in terms of our Statement of Facts so the proper exhibit could be referred to.

[fol. 254] The Court: I don't know that it will help greatly, but if we have that stipulation that the term of Direct Dealer Selling Agreement always refers to Exhibit No. 8 I think that it will probably serve the purpose.

Mr. Riley: Fine. I will avoid that then from now on.

"'Recognizing the importance of the good will of owners toward Chevrolet products, Dealer will furnish prompt and satisfactory service at reasonable cost to Chevrolet owners. Accordingly'—and then it describes the services that they will provide in the remaining portions of that paragraph.

In your tenure as a District Manager, and particularly from 1949 to 1953, what was your criterion for seeing that this provision of the Dealer Selling Agreement was accomplished?

A. I didn't have any criterion for it. That means, other than the fact that if there were complaints made by customers, it would then appear that the dealer was not treating his public properly, or he did not have an efficient service operation, or something like that, and I would endeavor to help him solve that difficulty in some way or other.

Q. And during that period of time that you were District Manager, did you have occasion to contact purchasers who had made complaints regarding dealers?

A. I cannot remember any specific example. Well, come to think about it, yes, at the request of a dealer I contacted [fol. 255] one customer, definitely, while I was in Yakima,

because they demanded to see a representative of the wholesale organization—of the factory—but by and large customer complaints were handled by the dealer's own personnel, or by him personally.

Q. This statement: '• • • recognizing the importance of the good will of owners toward Chevrolet products,'—would you say that that was one of your responsibilities as District Manager, to help maintain good will of owners toward Chevrolet products?

A. Yes, very much so.

Q. Just to wind up here, on what other occasions, other than the time that you were at the dealer's place of business, would you have occasion to meet with your dealers in your district, say, in the period from 1949 to 1953?

A. Well, there were social occasions, like Christmas parties. Did you say at other times than when I met with them in the dealership?

Q. Yes.

A. Social occasions, and when we would have a meeting in my district, either in Yakima, or Wenatchee, where we had zone personnel, why, naturally I would participate in the arrangements, and in the meeting set-up, and the general conduct of the meeting.

Q. Do you frequently at the district level have district sales meetings in which zone personnel participate?

A. Are you talking of the period of time in Yakima?

Q. Yes, in that period from 1949 to 1953.

A. Did we frequently have sales meetings in which zone [fol. 256] personnel would participate?

Q. Yes.

A. Not frequently. In fact, very infrequently. We would have service schools like, for example, a service representative or a service manager would come up, and mechanics or service managers, or both, would be trained on proper procedures for servicing the product.

Q. Were these at the district level?

A. Yes. And we had salesmen quiz meetings, and things of that nature. And we had—well, I would say that those primarily were the things. We never had any really large meetings, or anything like that. They were strictly on a district level.

Q. After the Korean War, when did the competitive period, to use that term loosely, begin again?

A. Well, I would say probably sometime in 1954 or 1955—along in the early fall of 1955. That would be my own opinion, strictly.

Q. Since that time, have the sales meetings—have your district meetings been more frequent than they were during the non-competitive period?

A. I think we hold many more meetings now than we used to hold.

Q. At the district level?

A. At the district level."

Mr. Riley: I had it marked to delete the rest, but I will continue.

"Q. And during that period of time did you have zone meetings?

A. Yes.

[fol. 257] Q. Were any of those zone meetings conducted in the State of Washington in the period from 1949 to 1953?

A. From 1949 to 1953?

Q. Yes.

A. I cannot say definitely. We had a truck meeting up here one time to present the new trucks, but I cannot say whether it was in that period of time. I would rather think it was when we presented the 1947 truck, and the advanced design truck. Other than that, I think all of the meetings were held in Portland. There may have been some, but I cannot say when they were or what they were.

Q. Did you have meetings in Spokane where zone and district representatives attended?

A. No doubt we had district meetings in Spokane, and in Seattle. I was thinking of meetings where we had all of the complete Portland Zone in the one location, but we had dealers' meetings in Spokane and Seattle during that period of time."

Mr. Riley: I think we can delete from Line 21 of Page 115 to the end of Page 116.

Mr. Williams: Yes.

Mr. Riley: And commence at Line 17 of Page 117.

Mr. Williams: Yes.

The Court: We will take a recess before we do that.
Mr. Riley: Thank you, Your Honor.

(Recess.)

[fol. 258] Mr. Riley: Page 118, Line 8, Counsel.
Mr. Williams: Yes.
Mr. Riley: Mr. Swanson had been called.

DEPOSITION OF JOHN H. SWANSON READ INTO RECORD

"Q. Will you state your name?
A. John H. Swanson.
Q. And your address?
A. Home or business?
Q. Home address.
A. 5625 Pleasure Point Lane, Bellevue, Washington.
Q. What is your business?
A. I am a Chevrolet dealer—a Chevrolet and Oldsmobile dealer.
Q. Where is your place of business located?
A. At 617—3rd Avenue, Renton.
Q. What is the name of your establishment?
A. Williams & Swanson.
Q. Is that a partnership?
A. Yes, it is a partnership.
Q. Now, you mention that you have the Chevrolet and Oldsmobile lines there?
A. Yes.
Q. Do you have any other General Motors line?
A. No others.
Q. How long have you had these franchises, Mr. Swanson?
A. The Chevrolet since May 6, 1931.
Q. And the Oldsmobile?
A. We received the Oldsmobile franchise in May of 1933.
Q. Are your Chevrolet and Oldsmobile arrangements handled out of the same office, or are they handled by different personnel from General Motors?
[fol. 259] A. They are handled by different personnel.
Q. Are they handled in a similar manner?
A. Reasonably so.

Q. Can you indicate what possibly different procedures are followed between the Oldsmobile personnel, as compared to the Chevrolet personnel?

A. Due to volume, I would say that our contact with Oldsmobile is less frequent.

Q. What contacts do you have with Oldsmobile with respect to your sales program?

A. We have a District Manager.

Q. And how often, or how frequently does he contact you?

A. Are we talking with reference to this year, or previous years?

Q. Say at the present time.

A. I would say twice a month.

Q. What is the general course of that contact on such a visit of twice a month?

A. With Oldsmobile?

Q. Yes.

A. We sit down with him and talk about the orders that we have, and the cars that we want to order from him, and then we go through sales promotion ideas. We talk to him about our parts and service business.

Q. Does the Oldsmobile representative handle parts and service and vehicle sales?

A. Generally speaking, that is right. The promotional end of it, we will say.

Q. What other services, or what service aside from the [fol. 260] general counseling that you have just described, does the Oldsmobile representative provide you in your sales programs at Renton?

A. Well, he will come to our sales meetings occasionally on request. He will help us find automobiles in the event of models and colors and options. He helps us in the overall welfare of our business.

Q. Does he assist you in obtaining sales personnel?

A. No.

Q. Are you able to maintain a satisfactory sales staff of your own?

A. Yes, sir.

Q. Does Oldsmobile have a separate or an independent parts department or parts representatives?

A. No. May I qualify that by saying that in the zone office they do? They have what they call a Parts & Service Manager. The District Manager, however, who contacts us—that is the frequent visitor—handles the overall end of the business. But in Portland, where the zone office is, why they do have what they call a Parts & Service man.

Q. May I ask who is your present Oldsmobile District Manager, or District Representative?

A. Glenn Michaelson.

Q. Where does he live?

A. In Bellevue.

Q. Does he have an office in this area?

A. No.

Q. In the period from 1949 to 1953, were your relations with Oldsmobile essentially similar to what you have just [fol. 261] described, with respect to frequency of visitation of personnel with reference to parts and attending your meetings?

A. Reasonably so.

Q. With respect to the Chevrolet Motor Division, would you describe the frequency that you have contact with Chevrolet personnel with respect to visits at your place of business at the present time?

A. We have a District Manager that calls on us on an average I would say of once a week. We also have someone from the zone office in service when we have a problem, that comes and makes the contact—usually upon request.

The parts department manager will call on us perhaps once a month, when he presents new products to us, or discusses our inventory, or discusses the various factory claims that we may have as far as the parts department is concerned; so he renders sales help as far as literature or booklets for the salesman are concerned.

Q. Was this course of conduct that you have just described in your relationship with parts and service representatives essentially the same in the period from 1949 to 1953?

A. Less frequent.

Q. Were the services provided then any different?

A. Basically, no, but we were working under the Portland Zone, and we had what they called a Branch Manager during those particular years that you mention, as I recall.

Q. Where did that Branch Manager office?

A. In Seattle.

Q. What other meetings do you have at the present time [fol. 262] with Chevrolet personnel in the State of Washington, aside from those meetings that you have at your place of business?

A. We have general sales meetings handled by the Zone Manager or the Assistant Zone Manager.

Q. What takes place at those meetings?

A. Well, it is basically for the presentation of a new program; a sales campaign; perhaps talking about new cars and used cars—what the comparisons are among the dealers; some dealers get into a little trouble in overstocking, and they help us out in working our new cars stocks around as far as trading is concerned.

They also bring to our attention perhaps the used car end of our business, as to whether our turn-over is proper, and if not, perhaps some of the things to correct that situation.

Q. Would you say that these meetings are successful in stimulating sales programs at your local level?

A. Yes, sir.

Q. Do they provide training services for your salesmen?

A. Yes, sir.

Q. What is the nature of these training services?

A. Well, they have a film service that we subscribe to. It comes from the Jam Handy Film Corporation.

Q. Are they obtained locally or maintained in stock locally?

A. No. I believe they come right directly from Jam Handy through a subscription that we have with them.

Q. How about the used car department service? Do they provide you with training?

[fol. 263] A. Yes, servicing used cars and new cars.

Q. Over the period of years that you have had a Chevrolet franchise, you have been on a very good relationship with both divisions of General Motors, have you?

A. We have had no problem.

Q. I was interested in the method by which you established a sales objective or a sales quota. Could you describe this for me?

A. As of yesterday morning, or the day before yesterday, I would say, we have our salesmen usually sit down at the beginning of the month, and then have them set their own quota, which we basically try to maintain as far as they are concerned, to follow through on.

Q. Have you had any difficulty in obtaining approval of the quota that you establish from either the Chevrolet or the Oldsmobile divisions?

A. As to what, sir?

Q. As to the sufficiency of your sales objective, or planning objective, or your quota?

A. I would say no. We had more problems getting automobiles over the period of years than we have getting in other basic deals from Chevrolet.

Q. By the way, what is your franchise area, aside from Renton itself?

A. Well, what we are charged with as far as a report goes— We are charged with Renton, Kennydale, Burien, Seahurst and Covington. I believe that is it.

Q. You say that you are charged with this area. Now, in what manner are you charged with this area?

[fol. 264] A. We naturally have to report every sale that we make through the County Auditor's office for licensing, and those are tabulated by an outfit by the name of Business Control here in Seattle, by which each registration is segregated into these various addresses, and for comparison purposes, for the number of years we have been in business, we have always gotten a report from them—we get that weekly—and then we get an overall report from Chevrolet, and they get that from the R. L. Polk, isn't it—from the R. L. Polk, and those show the number of Fords and Plymouths in our price class that we are talking about, and Ramblers and Larks now, and then the number of foreign cars that are registered, and our percentage is shown on the sheet, as we compare it with these other cars.

Q. Then your sales objective or your quota that you establish is related to the total number of possible vehicles, or the total number of people in that area?

A. Not with us, because we are so close to Seattle. We sell more cars than their registration shows as far as that particular town that is mentioned is concerned. In other

words, we get Seahurst and Burien, which is Seattle 88, and we sell a lot of cars in Seattle 88.

Q. Your ordering procedures, may I ask on what terms and how you order and purchase your automobiles—Chevrolet, for instance, Mr. Swanson?

A. Once a month the District Manager comes in and sits down and checks the number of cars that we have on hand; the number of unfilled orders—I mean still in process—and [fol. 265] then we estimate the number of sales that we are going to make the next month. And then we arrive at how many cars we are going to order for that particular month. We try to project that about three months in advance. But we work basically on the month that we are ordering for. In other words, we would order in the month of October for November, but we would also project further, into December and January, what our sales are going to be, and what our orders might have to be for those particular months. And after we have arrived at those figures, then it is up to our Sales Manager, or the dealer, to order those cars by model, color, option and so forth.

Q. After you have fixed the number for a given month, and then you have selected your models for color and so forth, do you expect the exact models and colors that you asked for?

A. We are guaranteed those. If there are any changes we are then notified by the factory that that particular option, or color, or model is not available, except perhaps—well, instead of a six it is going to be an eight, or instead of being a Power-Glide Transmission, it might have to be a Standard Transmission, and we have the option at that time to renege, and say that we do not want that car.

Q. With reference to invoicing and payment procedure, will you describe the method by which you pay for the automobiles?

A. We send the order in to the local Seattle Zone office, and then they send it to Oakland. It then goes to Oakland. [fol. 266] And then about three days before the car is shipped, we get notice that it has been shipped, and the billing is sent. And we have an arrangement with GMAC to floor our cars, so they take over from there, and then the cars are delivered to us through Transport Storage. They

come into Seattle by car—by boxcar—and then they are unloaded for us there, and Transport Storage puts them on their trucks and hauls them out to our place of business.

Q. Was this same procedure followed in 1949 to 1953, with regard to ordering and paying for vehicles?

A. Yes, the only difference being that we had all our cars then slipped right to Renton, and we unloaded them ourselves. This is a recent change."

Mr. Riley: I think then, Counsel, if you like we can strike Lines 17 through 25 on Page 127 down to Line 10 on Page 128.

Mr. Williams: Just a moment, Counsel.

I think we better read it, to make it consistent.

"Q. At what point in time do your flooring charges commence to accrue? At the time that they are delivered to you in the showroom, or at the time when they leave Oakland?

A. I am sorry. I cannot answer that question.

Mr. Williams: That might lead to a misconception. Ask him whether or not during the 1949 to 1953 period his orders went to the Portland Zone office, there being none here at that time.

The Witness: That is right.

[fol. 267] Mr. Williams: Your question is a little broad, and he might have missed the point. You asked him if everything was the same, and he said, 'Yes,' and there was that difference. He probably didn't catch it. Perhaps you should qualify it as to the time.

The Witness: We are talking about the present time. As long as there is a zone office, then the orders go to the zone office. In those years they went to Portland."

Mr. Riley: I am going to ask to delete 9 and 10. There has been a change made there. As a matter of fact, I am going to ask the Court to strike all from Line 17 on Page 127 to Line 10 on Page 128. Mr. Williams' statement isn't related to the question and the change that was made there. I don't particularly—

Mr. Williams: (Interposing) I resist that, Your Honor. I think the whole deposition should be—

The Court: (Interposing) I think it may stand.

Mr. Riley: All right.

The Court: It certainly goes to the weight of the testimony. I think the Court can well consider it in determining the weight of the testimony, as to whether the witness was confused or not, and also the fact that there was a change from Yes to No in the answer, and I think the Court can consider all those things in passing on the weight of the testimony, but I think the testimony is admissible.

Mr. Riley: All right. Then we have gone through it all, [fol. 268] Your Honor.

"By Mr. Riley:

Q. Through the local office?

A. No, sir.

Q. And those orders were prepared in conjunction with the District Manager?

A. Yes, sir.

Q. Was that done at your place of business?

A. Yes, sir.

Q. Going back to the question regarding the flooring system that you have with GMAC, I take it that that is done by trust receipts?

A. Yes, sir.

Q. I was not sure as to what period in time you commence paying flooring charges. Is that at the time of delivery, or back up the line towards Oakland?

A. I cannot answer that. I do not know, because we are only talking about one or two or three days, you see, when we get the invoice. In other words, we could get the invoice on the same day on which we get the automobile or it may come one or two or three days prior to the delivery of the car to our door, or in the boxcar.

Q. Do you receive any bill of lading, or anything other than a notice of shipment under your trust receipt financing system with GMAC?

A. I really don't know. All I have seen is the billing on it."

Mr. Riley: I think we can delete 8, 9 and 10 on Page 129.

Mr. Williams: That is right.

By Mr. Riley:

"Q. What is your purchasing procedure with respect to [fol. 269] Oldsmobile?

A. With respect to Oldsmobiles, we sit down every week or ten days and check our own stock; we discuss with the District Manager as to the balance of that particular stock, and we sell cars more or less by order with respect to Oldsmobile—because of the difference—they have more option and more accessory installation, and so forth. We then make out an order—the minute that we get a retail order, and make out a preference sheet, and send that order and preference sheet with the stipulation as to how we want those cars in order shipped, you see.

Q. I see.

A. Whereas with Chevrolet it is more volume, and consequently we have different periods where we send in orders right to the zone.

Q. Where are those orders sent for Oldsmobiles?

A. To Portland.

Q. Now, is your procedure for financing the same?

A. Yes.

Q. Was this true—this procedure for ordering, and the procedure for flooring—the same essentially in the period of from 1949 to 1953?

A. Yes.

Q. Are there any essential differences that you would like to mention at this time, or can mention?

A. As to Oldsmobile?

Q. Yes.

A. No. I think basically they are the same.

Q. Now, I take it that you have executed a Direct Dealer [fol. 270] Selling Agreement with Chevrolet Motor Division of General Motors?

A. Yes.

Q. And has that been renewed from time to time?

A. Yes.

Q. Do you have the same agreement, or a similar agreement with Oldsmobile?

A. Yes.

Q. Is there any coordination of Oldsmobile and Chevrolet activities between the two divisions?

A. Not to our knowledge.

Q. I understand that Chevrolet conducts various sales contests at the local zone or regional and national levels. Have you had experience with those sales organizations?

A. Yes, sir.

Q. Are most of these paid for or conducted by the Chevrolet Division?

A. A good many of them are, and some of them are participated in by the dealer.

Q. How frequently do you have sales contests involving your personnel?

A. About once a year.

Q. Does Oldsmobile conduct similar sales campaigns?

A. Yes.

Q. And how frequently do they conduct those?

A. Well, I would like you to qualify that. Is that from the standpoint of our participation, is that what you are asking?

Q. Well, I mean aside from your financial participation—[fol. 271] I am thinking in terms of participation of personnel. I will start over again. Do you conduct any of these sales contests with respect to either Chevrolet or Oldsmobile, without participation by Oldsmobile or Chevrolet?

A. Oh, yes.

Q. And then you have sales contests which are subsidized or financed both by you and Chevrolet and Oldsmobile?

A. Yes, sir.

Q. Are there others that are financed entirely by Chevrolet and Oldsmobile?

A. Yes.

Q. With respect to those paid for and conducted entirely by the Chevrolet people, how frequently are such contests conducted?

A. I would say that would be dependent on the market.

Q. When was your last national Chevrolet sales contest financed entirely by Chevrolet?

A. I believe in March—March and April, I believe. Yes, I believe in March and April.

Q. What was the objective, or what was the measure by which the winners were to be selected?

A. By percentage of sales performance as against standard.

Q. Percentage of sales, as against standard?

A. Against the market in our area, and past performance of our dealership, as to the number of cars we sold perhaps the previous year in that particular period.

Q. What is the exact name or title of that standard? I mean, how is that described? Is it named 'Quota', or is it named 'Objective', or 'Past Performance'?

[fol. 272] A. Well, that is a real good question. I understand how they arrive at them, but as to a particular name, it varies.

Q. I did not understand your definition of what the figure is, then. Will you define it?

A. I cannot define it, but I will give you an illustration.

Q. All right.

A. A year ago in March, as an example, in March, 1958, we sold so many X cars, or it might be trucks, and the contest was in March of this year, and the amount of increase in car sales all over the United States might have been a 5% increase or a 10% increase. Then that would be perhaps added on to ours, and that would be used as a base, and usually not particularly arbitrarily on the part of Chevrolet. It could be adjusted for one reason or another. In other words, I do not believe that they arrive at it as an arbitrary figure. It has to be on a good base figure to make it such a quota.

Q. Who establishes that figure for you?

A. Basically the zone works it out, I presume, and like I say—it might even be the District Manager who might sit down and figure out an equitable quota.

Q. Are you required to submit reports, or how is your performance determined?

A. We always have sent in a ten-day report to Chevrolet, giving the number of cars in stock, and the number of cars that we have sold.

Q. Does the Chevrolet Motor Division, with respect to this particular contest, do anything at your place of business [fol. 273] with regard to the conducting of the contest?

A. Again, the District Manager might help our Sales Manager to put on a campaign talk in the morning for the salesmen, but as far as anything else except encouraging the men is concerned—nothing.

Q. And providing literature?

A. Yes, sir.

Q. And I suppose special films?

A. Occasionally.

Q. One other thing with regard to shipment of automobiles—to back up a bit—if a vehicle is damaged in shipment, is my understanding correct that a claim for the damage, or the cost for repairing the damage is made to Chevrolet, and not to the carrier?

A. That is correct. I believe there was a change. We are talking about the present, again. It seems to me that when we were unloading our own cars we used to submit those claims directly to the carrier. I would not know during what years that was done.

Q. Was that prior to 1949, say?

A. I don't remember that, but at the present time we submit them through Chevrolet.

Q. Recognizing that you cannot pinpoint the date when this change occurred, can you give me an idea as to whether it was before 1950 or after 1950?

A. I don't know. I would have to look it up to find out.

Q. But it was, you would say, at least five years ago?

A. I would say so.

Q. All right. Now, with respect to service adjustment, [fol. 274] and servicing, replacement of parts, or repairs, or adjustments, or complaints by new purchasers, are you regularly reimbursed by the factory?

A. Yes, sir.

Q. Under what circumstances are you required to obtain approval by Chevrolet before you make a service adjustment on a new car?

A. Perhaps on a paint job. Basically that is something that they have their serviceman check it out before it is done.

Q. Have you ever had any claims for this type of service for new car purchasers turned down?

A. Yes.

Q. What is the criterion there?

A. The worst one being our service department, in not getting them in in time—what we call our application for policy adjustment.

Q. Is it fair to say that you are free to make requests for a service adjustment on new cars?

A. Yes, sir.

Q. As long as it is within the terms of the warranty on the purchase of a new car?

A. That is right. We have a real fine service department that Chevrolet Motor Division has confidence in, so our problem in that respect is very nil.

Q. Who does check your service adjustments that you make to purchasers pursuant to the new car warranties?

A. Who in our place of business?

Q. Who from the Chevrolet Motor Division checks or in-
[fol. 275] spects them?

A. In a situation where we have a question in our minds whether or not the customer has an adjustment coming, or where there might be a question as to whether the Chevrolet Motor Company would recognize an application for policy adjustment, we call the Service Manager in the zone office.

Q. And obtain his approval or disapproval?

A. We discuss it with him.

Q. Was this procedure esentially the same in 1949 through 1953?

A. Yes, except again that we had a very limited personnel during those years that you are talking about, and we would have to call Portland, perhaps.

Q. With respect to warranty adjustments or service adjustments on new cars, or cars that required adjustment that were within the warranty given to the purchaser, did you have a similar procedure with Oldsmobile?

A. Yes, sir.

Q. In the case of a claim by a purchaser in which there was some doubt in your mind as to whether it was within the warranty or not, what procedure would you follow with respect to Oldsmobiles?

A. We would call the Service Manager there in Portland, or they had a young fellow that would live in this area—

basically in Tacoma—that was working as a Service Representative.

Q. Then Oldsmobile in 1949 to 1953 did have a Service Manager that did visit you at your place of business?

A. Yes.

[fol. 276] Q. And who was a resident of this area?

A. Yes, sir.

Q. With respect to advertising programs in your area, do you have any advertising activities that you conduct in the local papers that are subsidized, or prepared, or planned by Chevrolet?

A. Do we have, you say?

Q. Yes.

A. No, sir.

Q. Do ads published in your local newspapers, or papers in your locale, use your trade name in advertising those Chevrolet products?

A. Yes.

Q. And are they paid for by Chevrolet?

A. Those are, yes.

Q. Do you or your District Manager have anything to do with the preparation of those materials, or are you advised when they are to be published?

A. We are advised only.

Q. Can you request publication for special events, or for some special purpose, or other thing?

A. No.

Q. Who pays for this advertising?

A. What year are you talking about?

Q. All right. Let us take right now.

A. They are paying for it.

Q. And in 1949 to 1953, I take it that you had a dealers' fund?

A. Yes.

[fol. 277] Q. And contributions were made to that fund by Chevrolet?

A. Yes, sir.

Q. And by Oldsmobile?

A. Yes.

Q. During the years 1949 through 1953, what conditions existed between the Oldsmobile advertising program, and the Chevrolet advertising program?

A. They were basically the same, excepting the amount. Our amount was greater with Oldsmobile than with Chevrolet.

Q. But their contribution to the advertising fund was in the same proportion as Chevrolet's?

A. Yes.

Q. And in each case, Chevrolet and Oldsmobile during 1949 to 1953 had the expenditure of all the sums in these funds under their exclusive direction—under the exclusive direction of Chevrolet and Oldsmobile?

A. Yes. To clarify that, Chevrolet had an outfit, and I suppose they do yet—the Campbell-Ewald Agency, and Oldsmobile had D. P. Brothers as their advertising agency."

Mr. Riley: I think that concludes the examination of Mr. Swanson.

Mr. Williams: That is correct.

Mr. Riley: Now, the examination of Mr. Greig on Page 141.

DEPOSITION OF GEORGE A. GREIG READ INTO RECORD

"Q. Will you state your name?

A. George A. Greig.

Q. Where do you live, Mr. Greig?

A. My home address or office address?

Q. Your home address.

[fol. 278] A. 2940 Hickory Grove Road, Bloomfield Hills, Michigan.

Q. By whom are you employed, Mr. Greig?

A. By the Chevrolet Motor Division of General Motors Corporation.

Q. Where are you employed?

A. In the General Motors Building at Detroit, Michigan.

Q. And what is your responsibility or title there?

A. Well,—"

Mr. Riley: Mr. Williams interposed and—

Mr. Williams: (Interposing) That can be omitted.

Mr. Riley: Delete 21 through 24.

Mr. Williams: Yes.

"Q. And what is your responsibility or title there?

A. I am on the staff of the General Sales Manager of the Chevrolet Motor Division, and I am one of the department heads, of which there are some twenty departments or so, and my responsibility has to do with dealer organizations and analysis activities.

Q. With respect to dealer organization, what is your mission in a little more detail there?

A. Well, I, in my position, am more commonly referred to—our departmental activity acts as a liaison between our central office sales management and our regional and zone management, with respect to carrying out and administering the policies of both the corporation and Chevrolet, as well as carrying out and administering the principles of our Chevrolet quality dealer program.

Q. Would you describe again what are the attributes [fol. 279] of your Chevrolet quality dealer program?

A. The attributes of our Chevrolet quality dealer program in principle is based on the premise of establishing the right number of Chevrolet dealers in the right places, and at the right time. We, in our departmental activity, are constantly reviewing the entire United States, in conjunction with our regional and zone managements, with respect to determining where Chevrolet dealers should be located. At the same time we work with our regional and zone management on behalf of our central office sales management, in reviewing all applications for the Chevrolet selling agreement, and whenever a Chevrolet applicant is recommended by zone management for a Chevrolet dealership, it is cleared through our departmental activity, on behalf of our central office sales management, before any agreements are executed with the applicant.

Q. Isn't it fair to say that the objective of your quality dealer program, or of the Chevrolet quality dealer program, is to advance the sale of Chevrolet products?

A. Our objective is to establish the right number of dealers with respect to their potential, and to assist our dealer organization individually and collectively, so that they can operate in a profitable manner.

Q. Well, aren't you more interested in selling Chevrolet products than seeing that the dealer makes a profit?

A. In my capacity we are interested in seeing that the dealers are properly established with respect to numbers, and that we do not have too many dealers or too few dealers and where we consider are our logical potential [fol. 280] areas, they are established in a manner to obtain a satisfactory return on their investment.

Q. But isn't that so because you have found that a healthy dealer or a strong dealer financially will sell more cars than one who is not?

A. Well, that is not quite true, because we have some dealers that are not too healthy financially, that are still in a position of obtaining a fair share of the available market in their area. The reason they are in that position is that some dealers have the managerial ability to obtain a better financial return than others.

Q. But on the average you are still striving to have a strong dealer organization in order to obtain the end result of selling more Chevrolet products, are you not?

A. Well, I do not know as I would look at it that way. I would look at it from the standpoint that we are establishing it based on the facts which we use in developing a market, and what we feel we should receive in the way of a portion of that available market. That, in itself, will indicate whether or not we are obtaining a fair share of that market.

Now, for example, to carry out that viewpoint, in arriving at a market one of the basic factors used are new car registrations, and, fortunately, in the automobile business that is a legal requirement by all state governments. And from that statistical information we can determine over the years, by individual communities, what a new car market will consist of. And from that factual information, together with trading areas growth business, we can deter- [fol. 281] mine what size market should be there, and what percentage of that market we should obtain in order to carry out the concepts of our quality dealer program.

Q. On the other hand, then, the quality dealer program will enable you to achieve this objective?

A. Of obtaining a fair share of the available market?

Q. Yes.

A. Yes.

Q. All right. Is it fair to state that your zone and your regional management or your organizations are designed to assist in meeting this sales objective by working with the dealers?

A. They are out there on the basis of carrying out the concepts of the quality dealer program, and to be of assistance to the dealers, individually and collectively, in their obtaining a fair share of the available market, and a satisfactory financial return on their investments.

Q. Turning for the moment to fleet sales activities that were described yesterday, is there a fleet sales department, or office of the general sales management to which you are attached?

A. There is a fleet sales department as a department of the general sales operation of the Chevrolet Motor Division, and that is headed up by another individual over which I have no responsibility.

Q. I would like to know if you know the procedures by which fleet sales business is conducted, and I would like to confine that to the State of Washington, if possible.

A. Well, you must understand that I am not a fleet [fol. 282] sales representative of our sales department, but we do have such a department. I will endeavor to answer your question as best I can.

First of all, again, our fleet sales department renders a service with respect to working with dealers, and contacting prospective fleet accounts, to determine whether or not they have any problems; whether or not they have any questions; whether or not they have anything on their mind that they would like to convey with respect to the Chevrolet product, and at the same time the same thing runs through in working with the dealers. In other words, working with dealers to find out if they are interested in fleet business. To find out if there are any questions that they may have on providing a product for fleet owners, or information of that kind. In other words, it is a service that we establish, and our fleet representatives render that service.

Q. Now, the office of the general sales manager—is that the correct term to use?

A. The office of the general sales manager?

Q. To which you are attached?

A. That is correct.

Q. Do the regional offices or zone offices, of which we have been speaking, come under the jurisdiction of the general sales manager?

A. Yes, sir. I might just break that down a little more for you. We have a general sales manager. We have six assistant general sales managers. We have one assistant general sales manager who is responsible for truck activi- [fol. 283] ties. We have an assistant general manager who is responsible for parts and accessories merchandising and warehousing activities. We have an assistant general sales manager who would be responsible for the Eastern half of the United States, and one who would be responsible for the Western half. We have an assistant general sales manager who is in charge of the central office and staff activities. And then we have an executive assistant general manager. That in itself constitutes our general sales manager and his assistants.

As I mentioned a moment ago, I am just one of the departments of the staff of the general sales manager, and as I referred to a moment ago, another department is your fleet department.

Q. Going back to fleet sales activities, in the ordinary course of events, I mean, and I am thinking in terms of the Washington market, who makes the initial contact with a possible fleet purchaser?

A. That is the dealer.

Q. When he makes a referral of a possible fleet purchaser, what assistance might he expect from the fleet sales department, or the manager of that department in this zone?

A. You will have to accept my knowledge of that, because I am not familiar with all of the actions of our fleet sales department.

Q. Well, ordinarily the dealer does obtain assistance from the fleet sales people, and he will conduct the initial contacts and make the bids in his own name, is that a [fol. 284] fair statement?

A. I would rather not answer that question for the simple reason that I am not in that departmental set-up, and I might not answer your question correctly.

Q. You mentioned a moment ago that a portion of your responsibility was to carry out not only the Chevrolet Division policies, but General Motors sales policies. What coordination of activities does occur between the various divisions of General Motors, and the Chevrolet Motor Division?

A. None. I might clarify what I said with regard to policies. The policies that I referred to are general dealer organizational policies that apply strictly to dealer organizational activities that may be established by the corporation that we are required to administer in our daily activities.

Q. All right, at the local level, and thinking in terms of the requirements that you include in your Direct Dealer Selling Agreement, isn't it fair to say that, for instance, the Chevrolet signs that you supply, and you require the dealers to purchase, are a part of your general effort to advance sales of the Chevrolet product?

A. Signs are, first of all—signs, first of all, that are purchased by a dealer—we do not furnish any signs, but it is the prerogative of the dealer to purchase signs in whatever manner he thinks will be to his benefit—to the benefit of his dealership operation.

Q. But he is required to have standard Chevrolet signs, is he not?

[fol. 285] A. We suggest signs for his use through our advertising department, which, again, is another departmental function, but the dealer has the option of displaying his dealership with whatever signs he deems would be of assistance in carrying out and applying his business technique to the particular area in which he is located.

Q. Generally, don't you expect to obtain compliance, for instance, with paragraph 22 of the Direct Dealer Selling Agreement?

A. We do, and we get compliance.

Q. And isn't that for the purpose of fostering the Chevrolet concept?

A. Well, the main purpose is to let people know, first of all, that he is a Chevrolet dealer, and he is there to render a service to the potential customers in his area of responsibility.

Q. Isn't another purpose of having these signs everywhere to build the Chevrolet name, so that—

Q. (Interposing) Well, it is to let the public know that Chevrolet is located in that particular community, and it is a service that we work with the dealer on, so the potential customers will know that he is an authorized Chevrolet dealer in that community.

Q. Take, for instance, the 'OK Used Car' concept, and your program I won't say requiring, but assisting dealers to maintain quality used cars and a standard used car merchandising program, isn't that in the end run as part of your program to advance the sale of Chevrolet products?

A. The 'OK Used Car' symbol is a trademark, and the [fol. 286] promotional materials that are available to the dealer are used by the dealer with respect to promoting the sale of his used cars, but, again, that is another service that is made to the dealer at his option, which Chevrolet renders, and we, through our regional and zone management, convey to a dealer, with respect to his maintaining a satisfactory operation, obtaining a satisfactory financial return on his investment.

Q. But isn't it a fact that you expect, and do obtain participation from the vast, let us say 90% of your dealers in this 'OK Used Car' merchandising program?

A. I do not know what the percentage is, but I would say that a dealer with an aggressive attitude and a good business judgment will participate in the 'OK Used Car' program.

Q. But don't you encourage and foster an aggressive used car merchandsing program as a policy of Chevrolet?

A. I will answer your question this way: We make such a program available for the dealers, and we give a lot of forethought to the program, and with the trademark attached to it, any good business manager of a Chevrolet dealership would always accept such a suggestion, and make it applicable to his business operation.

Q. But you do provide these services, and solicit their participation, isn't it a fact, because you have found that a dealer that turns over his used cars is also going to be able to reinvest his money in new cars, or will be able to purchase more, and sell more used cars?

A. It stands to reason that a good used car operator will [fol. 287] always keep himself in a good financial status. A dealer can go broke if he does not know how to merchandise used cars, and we feel that through this suggestive, for his consideration, program of the 'OK Used Car' plan, it will materially assist him in keeping on a liquid basis.

Q. You, of course, have been in the automobile business, I take it, for many years?

A. A few years.

Q. How many years have you been in the Chevrolet sales department?

A. I have only been in the sales department fourteen years. Prior to that time I used to be in the accounting department.

Q. Isn't it a fact, or is it a fair statement—I will put it this way, that new car sales will run in direct proportion to the volume of turnover in used cars?

A. The used cars will run a little heavier.

Q. So if used car sales slow down, your sale of new cars will slow down, isn't that true?

A. That is a reasonable assumption, although with all due respect to the way you phrase it, it depends on the market conditions.

Q. Surely.

A. As you probably know from your personal experience, with the resumption of post-war production, you were able to get a pretty good price on your pre-war used car. In fact, you probably did better on it when you sold it than what you paid for it, but that was only for short [fol. 288] duration, and because of the demand market that created itself because of the non-productive years during the war period.

Q. What we have said with respect to the conduct of the 'OK Used Car' program at the local level would also apply, would it not, to your program for parts inventories, and your program for uniform service department requirements of your local dealers?

A. Any programs that are prepared for use by dealers relative to those phases of their dealership operations,

are, again, helpful hints—helpful ways and means for a dealer to maintain a satisfactory operation.

Q. When you say 'a satisfactory operation', do you include in that that he will satisfactorily meet the sales or planning objectives?

A. Well, we will put it this way, where he will obtain a fair share of available market in his particular area of responsibility. In other words, what I am saying there is that it stands to reason that all markets are not the same. They vary because of their potentialities."

Mr. Riley: Would you like to exclude that next question and answer? He said he didn't know. We can then delete the rest of Page 153 and conclude the examination of that witness.

Mr. Williams: That is all right.

The Court: We will be at recess until 10:00 o'clock tomorrow morning.

Mr. Riley: Thank you, Your Honor.

(Recess.)

[fol. 289] MORNING SESSION

10:00 o'clock a.m., December 16, 1959

(The Court reconvened pursuant to adjournment. All parties present.)

Mr. Riley: Your Honor, I believe we were in the process of publishing the deposition and counsel indicated they would like to follow the same process, so with the leave of Court, would it be permissible to have these gentlemen read in the questions and answers?

The Court: Certainly. Are you on Ross or Reeves?

Mr. Williams: I think on Ross, Your Honor, it has some continuity with Swanson. It makes it a little easier to follow, if we could, Mr. Riley.

Mr. Riley: Then, Mr. Canterbury, we go to the Direct Examination by Mr. Riley commencing on page 7 of the deposition taken pursuant to stipulation of counsel at Portland, Oregon, November 4th, 1959, at 9:45 a.m., Room 450 Multnomah County Court House.

DEPOSITION OF WILLIAM H. ROSS READ INTO RECORD

(Reading of the Deposition of William H. Ross, as follows: Mr. Malone read the questions and Mr. Gagliardi read the answers.)

"By Mr. Riley:

Q. Would you state your full name, and spell your last name once again for the record, please?

A. William H. Ross, R-o-s-s.

[fol. 290] Q. Where do you reside?

A. My residence address?

Q. Yes.

A. At 2315 Southwest 84th, Portland.

Q. By whom are you employed?

A. By the Pontiac Division of the General Motors Corporation.

Q. And where are you employed?

A. 350 Pittock Block Building in Portland.

Q. And would you tell us the title of your present position?

A. I am the Portland Zone Manager for the Pontiac Motor Division.

Q. And how long have you held that position?

A. Since September 1st, 1958.

Q. Could you relate the positions that you have held in General Motors' Pontiac Division, or any other division of General Motors, since 1949 to the present time, to your present position that is?

A. Well, I think if I worked backwards—prior to becoming Zone Manager I was the Assistant Zone Manager in the Portland Zone. Prior to that I was the Regional Sales Promotion Manager for the Pacific Region out of San Francisco. Prior to that I was the Business Management Manager in the Portland Zone. Prior to that time a District Manager operating out of the City of Eugene in Oregon.

Q. With respect to the period from July of 1950 to July of 1951 where were you located and in what capacity?

A. I was the Zone Business Management Manager in [fol. 291] the Portland Zone located in Portland.

Q. Now, would you describe the geographical limits of what you refer to as the Portland Zone?

A. The states of Washington, Oregon, the northern counties of Idaho—I believe there are ten counties involved—the extreme western part of the State of Montana, and the State of Alaska.

Q. Have these geographical limits remained fairly constant since 1949?

A. With the exception of one change in—prior to November 1st of 1953 we did not have the western Montana dealers; they were acquired at that time.

Q. Now, would you state just generally the responsibilities of your present position as Zone Manager?

A. Well, as Zone Manager of the Portland Zone I am charged with the responsibility of acquiring and maintaining a dealer organization to represent the product in the zone under my area of responsibility.

Q. How many dealers do you have in your organization in the State of Washington?

A. There are 51 dealers in the State of Washington.

Q. To carry this out, I take it you have an organization within your zone organization. Could you describe that generally how that is broken down in terms of districts?

A. Now there are five districts in the Portland Zone.

Q. How many dealers do you have in your dealer organization in the State of Washington?

A. Three of them are a part of the State of Washington. One is wholly within the State of Washington and the other two are partially, part of the district is comprised [fol. 292] by the State of Washington.

Q. Now, was this breakdown which you just related in terms of the district organization essentially the same in 1950 and '51?

A. No. In 1950 and '51, as I recall, there were only two districts in the State of Washington. I am not entirely sure about that; I would have to check.

Q. All right. Do you have any offices situated in the State of Washington—

A. No, sir.

Q. —in your organization?

How many employees do you have who are actually located in the State of Washington or working in the State of Washington?

A. I have three District Managers and a Service Representative.

Q. Now, are those four individuals employed full-time in the State of Washington?

A. One of them is employed full-time in the State of Washington; he is the District Manager in the Seattle area. The other two devote approximately 50 per cent of their time to dealers in the State of Washington, and the other dealers in Montana, Idaho and Oregon.

Q. How many people do you have employed in your zone organization in total?

A. There are 20 employees.

Q. Others of those, I take it, are concerned at least part of their time with activities in the State of Washington?

A. Some of them are, yes.

[fol. 293] Q. Could you give me an estimate of who they might be and what their capacities would be?

A. Well, to begin with I have an Assistant Zone Manager, I have a Zone Parts and Service Manager, and a Zone Business Management Manager. Those would be the only others, as I recall, that would have duties within the State of Washington.

Q. Do you have any warehouses or any other service or physical facilities situated in the State of Washington at the present time?

A. The Pontiac Motor Division does not.

Q. How about distribution of parts? Does Pontiac have its own parts division, or is that handled by the General Motors parts organization, or is there such a thing?

A. Parts are handled by the General Motors Parts Division.

Q. Can you tell me whether they have at the present time any parts warehouses in Washington, or how Washington dealers are supplied with Pontiac parts?

A. They have no parts warehouse in the State of Washington. The dealers in Washington are supplied from the Portland warehouse of the General Motors Parts Division.

Q. In your zone organization you don't have a Pontiac parts representative, I take it then?

A. Not as such.

Q. But then you work with the General Motors Parts Division, or personnel in the parts division?

A. No, we don't work with them except from the standpoint that dealers order parts from them. That is the only contact we have with them.

[fol. 294] Q. Well, the Service Representative, that you mentioned a while ago, is concerned with defective parts and adjustments and customer complaints and training of service personnel, I take it?

A. He is—his responsibilities in his job are concerned with everything except the training of personnel. He does very little training.

Q. Well, would you describe then just in brief what his responsibilities are?

A. Yes. He is charged with the responsibility of contacting owners who have complained either to us or to our dealer concerning our product; he assists the dealer's service organization on any problems involving our product. Generally that is his responsibility.

Q. And this was true, I take it, in 1950 and 1951, as far as you can recall?

A. In 1950 and 1951 we did not have a Zone Service Representative.

Q. How was that variety of complaint handled at that time?

A. It was handled by the personnel in the Zone Service Department.

Q. Going back to your particular responsibilities, do you have occasion to visit with dealers in the State of Washington personally, yourself?

A. Yes, I do.

Q. And could you state how frequently you would visit, let's say, the average of your 51 dealers that you have in the State of Washington?

A. Well, it is a little bit difficult to answer because the [fol. 295] time period varies. I visit them in the form of meetings, I visit them in the form of contact at their places

of business, and I visit them within the zone office when they come into Portland.

Q. Now, you have stated that your first responsibility—or your responsibilities as Zone Manager are to procure and maintain a dealer organization. What reports are you required to submit to your superiors as far as your accomplishments of your zone organization are concerned?

A. The only reports that we submit are mostly, I would say, in the form of letters to my Regional office. There are some printed forms that are required from time to time in the—

Q. What type of printed forms do you have for submitting reports?

A. Well, there are a variety of them.

Q. Would you describe some of them?

A. Mostly concerning sales, stock, orders, car orders and things of that nature.

Q. I take it, is it true, that your zone organization is compared in these reports with the performance of other zone organizations of the Pontiac Division of General Motors?

A. Generally we are judged in our performance with the other zones in the Pontiac Motor Division.

Q. Would you state how your performance is measured, by what criteria?

A. It is measured in many ways. It is measured in the performance of the dealers under my jurisdiction, their [fol. 296] penetration of the medium price class field that is available to them, the amount of profit that those dealers are able to extract from that market, and the—well, there is an improvement factor involved. In other words, where was the Portland Zone when I assumed control of it and where is it today in relation to those factors.

Q. Do you have a sales objective in terms of gross units of automobiles or dollars of sales of Pontiac automobiles and chassis?

A. Our objectives, if you could call them such, would be based on the medium price class field, the amount of market that is available. We feel that we don't set objectives as such for our dealer organization. They attempt

to secure a reasonable portion of the market that is available to them in the medium price field.

Q. Well, now, for the coming year, the 1960 models of Pontiacs, does your zone organization have a sales objective or quota?

A. We have an objective that we ourselves have set, or I have set.

Q. And is this approved or is it established in conjunction with your superiors at the Regional level?

A. No; it is taken mostly on my own responsibility.

Q. Now, this sales objective that you have established then, I take it, is that broken down in terms of districts within your zone?

A. Normally it would be. At the present time we are out of production and it is a little difficult to anticipate what is going to happen in that respect, so I have not as [fol. 297] yet done that.

Q. That reflects the steel situation?

A. Yes.

Q. Well, then you state that normally it would be?

A. Uh-huh.

Q. Well, going back then to 1950 and 1951, would that have been true in 1950 and 1951 that you would have broken your sales objectives down in terms of the districts within your zone?

A. 1950 and 1951, as I recall, we were selling whatever we could get, our dealer organization was selling all the cars it could receive from us and it wasn't necessary at that time to establish objectives.

Q. All right. Then in the periods in between, I take it, or in normal times, absent war and absent strikes, you would—

A. I would break down an objective by district or by dealer.

Q. All right; fine.

Now, you have indicated that you have broken those down in terms of objective by district and by dealers, and you mentioned that another basis by which your performance is measured—and I mean the performance of your zone organization—as being the amount of profit as shown by dealers. How is that significant?

A. Well, the significance of it is that obviously a dealer is in business for that purpose, to make money. The more profits that he makes the stronger he becomes, and the stronger my product becomes as a consequence.

Q. Is that a company policy in maintaining a strong [fol. 298] dealer organization?

A. Yes, it is.

Q. And would you say that that policy is based upon—"

Mr. Riley: We can eliminate lines 23 through 25 at page 11 and commence at the top of the page 12. Is that all right, counsel?

Mr. Williams: All right.

(Reading of Mr. Ross's deposition continued.)

"Q. I am interested now in company policy insofar as you were acquainted with it, Mr. Ross, and wanted to know again the purpose of the strong dealer organization in terms of a financially able dealer organization?

A. Well, a strong dealer, of course, is able to continue operating in his—in the market in which he is presently operating. If he does not make a profit, obviously he cannot continue to operate and represent our product in that area.

Q. Well, how long have you been in the automobile business?

A. I have been in the automobile business since 1940.

Q. Has it been your experience that a financially strong dealer in the long run will produce more sales in terms of vehicle units than one who is not?

A. That is a reasonable assumption, I would say, from my experience.

Q. Does Pontiac have an established accounting policy that dealers are required to comply with?

A. There is a standard accounting procedure that they are asked to take advantage of. Not all of them do, how- [fol. 299] ever. It depends mostly upon the size of the dealer involved.

Q. I take it they do submit standard forms periodically, however, to—

A. They do submit a financial statement to us each month.

Q. And the purpose of those financial statements is to ascertain that they are financially able?

A. To ascertain that the dealer has ample capital and is making an adequate return on his investment.

Q. Do you have personnel in your organization who are responsible for reviewing these forms?

A. Well, I do. My Assistant Zone Manager does; but directly I have a Zone Business Management Manager whose entire responsibility is along that line.

Q. Suppose you have a dealer in a situation indicating that his financial position is approaching, let's say, insolvency, and this is ascertained from your reports submitted to you. What procedures would you follow?

A. Well, we would—the zone personnel would review with the dealer the particular situation involved and counsel with him in an attempt to assist him in correcting his situation.

Q. Now, the term 'counseling' pops up now and again. Would you describe what you mean by that?

A. Well, quite briefly, the dealer who handles a Pontiac —the Pontiac automobile is an independent merchant, he operates on his own capital and, therefore, any decisions he makes regarding the use of that capital are his own prerogative and, therefore, we merely counsel with him. What he does with his capital is up to him.

[fol. 300] Q. Do you have any services available to him to improve his situation, or does Pontiac Division have services available to him?

A. None other than the counseling of the zone organization.

Q. Well, can you elaborate a bit on what this counseling consists of?

A. Well, it consists of the—from the financial statements submitted to us we—there is prepared back in Pontiac, Michigan an 'average sheet', you might call it, outlining the various grosses—expenses in the form of percentages against the gross sales reflected by the financial statements that other dealers in the United States have submitted, and from that a dealer can—from these averages he can define whether his operation is up to standard of what the

rest of the dealers—what Pontiac dealers are doing in the rest of the country.

Q. Well, suppose that this analysis indicated that the dealer's service department was consistently below the national average and was consistently losing by these criteria, do you have any services available that you offer the dealer?

A. We would offer him counsel in the form of advice, suggestions as to what other dealers are doing in like circumstances so that he may avail himself of their experience.

Q. Suppose this is true in the used car division, the used car department is showing consistent loss by these criteria that you have established in your accounting forms, is there a similar—

A. The same would hold true.

[fol. 301] Q. Would you do that personally, these services with reference to the parts department or service department or used car department?

A. I would have to break them each down. The service department problems would be handled through my Zone Service Manager; the financial problems that arose would be handled through my Zone Business Management Manager, and the used car problems would be handled by my Assistant Zone Manager, all of which I would have a hand in to a certain extent.

Q. All right. Now, let's assume that this particular dealer who is dropping behind and is approaching insolvency fails to abide by your suggestions of your counseling, as it is, and continues to show a loss and his sales decline as well, what remedies are available to you?

A. Well, a situation like that normally takes care of itself. If that condition of which you speak continues, obviously the dealer is not going to make a profit commensurate with his investment and undoubtedly he will probably go out of business if he does not correct it.

Q. Now, you stated a while ago—all right, we will turn from that question—you stated a while ago that your mission is—one of them—to establish and maintain a dealer organization. Would you describe the criteria that you

apply or the requirements that you have for issuing a franchise to a prospective dealer?

A. First of all the applicant's character is investigated, of course. His business ability is taken into account. A survey is made of what his previous business experience [fol. 302] has been, and of course we review his capacity to invest.

Q. Who has the final O.K. or approval of a prospective dealer as far as the granting of a franchise is concerned?

A. The final approval is the General Sales Manager of the Pontiac Motor Division in Pontiac, Michigan, or one of his assistants.

Q. You have a form of dealer agreement, I take it,—

A. I do.

Q. —executed in each case?

What are the periods of these agreements?

A. At the present time the period is a five-year agreement.

Q. Now, turning to your District Sales Managers. Is that a proper title for the managers of your districts?

A. No; we call them District Managers.

Q. District Managers.

Would you indicate what the duties and responsibilities are of the District Managers?

A. A District Manager's responsibility is to assist a dealer in the profit venture, to counsel with him concerning any impairments in his operation. Quite generally I would say that is his job, one of assistance.

Q. They carry this job out generally in the dealer's place of business?

A. The District Manager makes contacts at the dealer's place of business, yes.

Q. Do these District Managers have any offices or place of business?

A. The District Manager operates out of his home, receives mail there, and sends mail to the Zone Office from [fol. 303] that point.

Q. How frequently would they have occasion to be in contact with the average dealer in a district in the State of Washington?

A. That would be dependent upon the size of the dealer. The smaller dealers they would contact a minimum of once a month. Their larger dealers they would contact two, three and four times a month.

Q. Now, I take it that the District Managers each have an objective within their district and that their performance is measured with other District Managers in your zone; is that a correct statement?

A. We have measures of judging their performance, the amount of market penetration their dealers are able to obtain, the amount of profits those dealers are able to obtain.

Q. This market penetration, how is that expressed; is it in terms of dollars of sales or number of units?

A. It is in percentage of the available medium price field.

Q. And is this established nationally, the percentage of the available medium price field? Is that a national factor or how do you determine that?

A. Well, we determine it from records—it is an historical thing. We acquire the registration information on all automobiles sold in the medium price field and apply Pontiac against the—the number of Pontiacs registered against the total of medium priced cars sold in a given period.

Q. Say for years past to the present that factor was 3 per cent of the registration for Pontiac, then you would [fol. 304] shoot for at least 3 per cent or more next year; is that a fair statement?

A. It is reasonable to assume that we would want to improve the position of Pontiac, yes.

Q. All right. Then does the District Sales Manager have any responsibility for breaking his objective down among his dealers, or is that accomplished by you, did I understand?

A. That is accomplished by me in the original instance. However the title of the employee is District Manager, not District Sales Manager.

Q. And again the same factors are involved in determining—

A. Yes, basically the same factors.

Q. The dealers' ordering procedures. You have been a District Manager—

A. Yes, I have.

Q. —in this area.

And by the way, before we get into that question, this responsibility and the duties of the District Sales Manager, has there been any essential change in those responsibilities? We have been speaking in terms of the present. Has there been any change since 1950?

A. No basic change. However, the title of the employee is District Manager, not District Sales Manager.

Q. Now the ordering procedure used by a dealer. Would you describe in general how a dealer proceeds to acquire an inventory of automobiles?

A. Well, I suppose it is started in the original instance by—through counseling with the zone organization and a [fol. 305] dealer. They determine the amount of market that they feel will be available to that dealer in the coming 30 days and the coming 90 to 120 days in the form of a projection. It is a mutual agreement factor reached between the dealer and the zone personnel. The dealer then submits an order on a car order form to the car distribution department of the zone, and it is processed from that point.

Q. What role does the District Manager have in establishing this one-month, two-month, three-month sales projection that is prepared or submitted by the dealer?

A. A historical role basically. He looks at the immediate —the zone personnel who do this job, look at the immediate past market, they look at the markets for the particular month in question over the past years and arrive at a mutually agreed market estimate.

Q. Well, now, I don't think you understood my question. I am thinking in terms of the District Manager. What role does he have? Does he work with the dealer in preparing this sales projection, the one, two and three months?

A. Yes, he does.

Q. —which is submitted to you?

A. He sits down with the dealer and between the dealer and the District Manager they analyze the market and reach a mutual understanding as to what that market may become in the immediate 90 or 120 days.

Q. And in ordering stocks—let's say new model stocks—once the initial sales projection is made in a normal year,

does he have a choice of the models that he is going to [fol. 306] show or are those automatically distributed as they are available?

A. No; they are—as far as possible we ask him for his choice of models and he submits an order to us for those models.

Q. Suppose a dealer has submitted a 90-day projection and under that projection he has submitted some orders, but suppose that at the 60-day point he has only submitted half as many orders as he has projected for that 60-day period, would automobiles be shipped to him anyway?

A. No; no order is shipped—no automobile is shipped to a Pontiac dealer without a signed order by the dealer.

Q. In such an instance what steps would be taken by you or your District Manager if that situation obtained in which a dealer had submitted a sales projection and at the 60-day point he had only ordered half as many cars as had been projected for the 60-day period?

A. Well, we would bring it to his attention; the zone personnel would again counsel with him on the feasibility of not—of not having an adequate stock to properly penetrate that profit market that is available to him.

Q. Suppose you, in looking at this situation of this particular dealer, found that he had a lesser number of salesmen than was ordinarily the case, or which you felt would be a reasonable number of salesmen, have you had occasion to indicate that he should hire more salesmen?

A. Yes.

Q. Generally when you do this have dealers gone along with you on your recommendation?

[fol. 307] A. In some cases they do, and in some cases they do not. It is their prerogative to hire any personnel.

Q. Do you have any dealers in your organization who are financed by the Motors Holding Division?

A. At the present time I have two.

Q. How many of those are in Washington?

A. Both of them.

Q. What are the terms of shipment of these automobiles to dealers in the State of Washington?

A. They vary. Some of them are shipped under sight drafts; others are shipped—some dealers are shipped into

a warehouse and they obtain their cars from that warehouse by check, or some of them are on power of attorney at our plant.

Q. Most of your dealers are financed by GMAC?

A. Not most of them, no. I have a considerable amount of them that are financed by banks and outside discount companies, as we call them.

Q. This warehousing that you mentioned, warehouse system, in 1950 and '51 do you know where warehouses were located or how those are distributed?

A. Well, we have two warehouses that we operate from that dealers accept cars from, one in Seattle and one in Spokane.

Q. Was that true in 1950 and 1951, do you know?

A. Yes, it was.

Q. How do they operate; in what capacity?

A. Well, they operate as a public warehouse. Pontiac Motor Division has an agreement with them whereby the [fol. 308] operator of that warehouse will house, unload and release cars for the Portland Zone office.

Q. Vehicles that are shipped there, are they consigned to dealers at the time they arrive at their warehouses?

A. Most of them are. However, some of them are shipped there at our direction, at the zone office's direction, a minimum amount, approximately 10 per cent perhaps, to assist dealers in immediate orders, where they may—an occasion may arise where they need a particular automobile that they do not have in stock, we endeavor to help them and assist them through the zone stock in the warehouse.

Q. If you had a general market condition in which, say, at the 60-day point of the 90-day projection period your sales through your zone were somewhat below your projection, would you have more cars not consigned to dealers in warehouses at such a period in the ordinary course of events?

A. No; that doesn't generally work that way because of the time involved in processing the order.

Q. Have you had occasions in your experience in the Pontiac Division in which production at Detroit so exceeded general demand so that the district or the—correction, zone

organization was consigned automobiles to warehouses in their district that had not been ordered by dealers?

A. Under very rare circumstances that has happened. I am thinking now of the clean-up situation where we are unable to fill a dealer's orders because of the lack of equipment that we may have at our plant.

[fol. 309] Q. All right. I would like to turn now to the procedures that you follow when it comes time to show a new model annually. These dates for showing are established at a national level, I take it?

A. They are by Pontiac.

Q. And do you conduct showings and promotion meetings for your dealers in your organization, zone organization?

A. I do not conduct them. The showing is done on a Regional basis in San Francisco. Lately we have in the past shown in the—within the zone at a central point within the zone, usually Portland, where the dealers are invited into a meeting to show them the new model.

Q. Have you had occasion to have showings in Washington, in the State of Washington?

A. We did in—I can't recall exactly the date, but I do know of two years that we showed in Seattle because of the facilities that were available up there in the old Metropolitan Theater.

Q. But ordinarily, I take it, you do this at a Regional—

A. In the past four years it has been done at a Regional level.

Q. Now, you have uniform sales promotional devices that are distributed to dealers in advance of the annual showing of the new models?

A. We have—we offer to our dealer organization the opportunity to purchase promotional materials to help promote the sale of Pontiac products prior to the announcement of the car nationally.

Q. Well, actually most if not all of them take that [fol. 310] material, don't they?

A. They take it in varying degrees; some of them take very little, others take more.

Q. Those that do not, would that be confined to your smaller dealers, do you think?

A. To the smaller points, yes.

Q. What percentage of your dealers would that amount to?

A. The small points?

Q. Yes.

A. Well, in this area it amounts to a considerable percentage, because this area is unlike a metropolitan area, I am speaking of San Francisco and Los Angeles. Most of our dealers are of what we would term a small nature,—

Q. Did—

A. —probably—excuse me.

Q. That is all right. In terms of the amount of sales accomplished, that would represent a small percentage of your total sales, would it not?

A. Are you speaking of these materials?

Q. Yes, of the dealers that do or do not take these materials, promotional materials.

A. It would constitute a small percentage, yes.

Q. Well, now, in promotion you also have material distributed free of charge by Pontiac?

A. Yes, we do.

Q. What does that consist of?

A. Normally that consists of brochures that we print at our expense and are distributed to them free of charge periodically during the model run based on the estimated [fol. 311] markets at the dealer's point.

Q. In '50 and '51 did Pontiac have a cooperative advertising system?

A. Yes, we did.

Q. Would you describe how that worked?

A. Well, the cooperative advertising fund, as it was called, was in effect at that time whereby the dealer and Pontiac each contributed—off-hand I can't recall the exact amount—contributed to this fund and it was disbursed through our central office advertising department in conjunction with our advertising agency, MacManus, John & Adams, and in counseling with the dealer to a certain extent.

Q. All right. Now, we have discussed the showings of new models of automobiles. What other meetings or pro-

motional meetings do you have within your zone organization for dealers?

A. Prior to the announcement of a new model—a national announcement to the public of a new Pontiac we conduct sales training schools, more or less for the salesmen and the dealers, to acquaint them with the new features of the automobile, and we conduct service schools for the dealer's service department employees.

Q. This sales training, let's just touch on that for a moment how.

A. Uh-huh.

Q. These sales training meetings that you have, are those conducted at the District level?

A. Not exactly the District level. We normally hold [fol. 312] them in central places, Seattle, Spokane, Walla Walla, Yakima, in order to accommodate the dealers in that particular area, lessen their travel.

Q. All right. Now aside from the annual showing or pre-showing meetings that you have just described, do you have any other meetings during the course of the year, any promotion or sales training meetings that you offer from your zone office?

A. Periodically as the occasion arises we do have the same type of meeting, perhaps comparison meetings, for salesmen and dealers to point out the advantages in the Pontiac product over the competition.

Q. And service meetings that you have in advance of showings, do you also conduct service meetings in between showings during the year?

A. Oh, yes, service meetings are—service schools, rather, are held throughout the year.

Q. And the purposes of those schools are what?

A. To train dealer mechanics in the intricacies of the Pontiac product.

Q. Is it fair to state that Pontiac's policy there is to establish an efficient service organization at the retail level in order to build the Pontiac trade name?

A. Well, of course, the objective is to assist the dealers under our jurisdiction in giving the best service possible to their customers, which in turn of course, results in a better recognition of the Pontiac product.

Q. All right. Now, do you have any other type of training program other than the service and sales programs [fol. 313] we have just discussed that you offer to your dealer organization?

A. Periodically we offer to the dealer organization a business management training clinic whereby we invite the dealer and his accountant to assist them in analysis of financial statements to further their understanding of their business, yes.

Q. How about sales—actual sales contests, that is salesmen's sales contests.

A. Uh-huh.

Q. Does Pontiac, like Chevrolet, sponsor and promote such sales contests?

A. I don't know what Chevrolet does on that. Pontiac Motor Division does from time to time sponsor a salesmen and dealer contest from a national level.

Q. You have occasion to contact your dealers then, I take it, at the local level to promote this program?

A. It is done usually in the form of a meeting that they are invited to to present the program to them.

Q. Do your District Managers encourage dealers and do they conduct sales meetings in dealer locations on these occasions, contests?

A. They do then, and during the year a District Manager will, in an attempt again to assist this dealer in his sales effort, will hold an information session with the salesmen to point out particular sales features of our product that he feels perhaps they might not be aware of.

Q. Is it fair to state that your effort then of your organization is to actually encourage and assist and develop the [fol. 314] retail market to achieve your sales objectives at the zone level?

A. Well, it is actually our objective to assist the dealer, and in assisting him if this end result comes about, why, then I would say that that is the objective.

Q. All right. Incidentally, now, your zone organization and your responsibilities, are they promulgated and established in any written document that you refer to as far as your mission and tasks of your organization are concerned?

A. Well, I would say that they are described to a certain extent in the zone office manual and the zone desk plan. There is no particular job description that I have ever seen.

Q. Does the District Manager have a similar document or handbook to go by?

A. He has no written material that he can refer to, no. Most of it is in the form of instruction from the zone office.

Q. Pricing policies of the Pontiac. Now, prices are published and promulgated, I take it,—that is retail price—by Pontiac; is that a fair—

A. Each year we advise the dealers of a suggested price. Of course, that is taken care of pretty much today by the national billing law.

Q. Yes.

A. We suggest prices to dealers. It is up to them whether or not they wish to abide by it and sell their products at that particular price.

[fol. 315] Q. But periodically price lists are published and distributed to the dealers?

A. At the beginning of each model the price lists are presented to the dealer organization, yes, suggested price lists.

Q. I want to turn now to the problem of customer complaints. Dealers do have authority, do they not, under their dealer agreement to make adjustments on customer complaints; that is to say, under the new car warranty?

A. Yes, they do.

Q. And how is a dealer then compensated for these adjustments?

A. He then submits a form, which we refer to as an AFA, an application for adjustment, to the zone office, where it is processed and credited to his account.

Q. Under what situations or circumstances must a dealer obtain advance approval before he makes an adjustment of a customer complaint?

A. He will consult with us in the event of the matter is one of—where the car is out of the warranty period, the established warranty period; he will ask us for advice.

Q. Is there any limit as to amounts?

A. No, there is no particular limit as to amounts. We take into consideration each case as it comes up and advise

him what reimbursement we will give him for making an adjustment under the particular circumstances.

Q. Now, as far as damage to vehicles in shipment is concerned, do you make those adjustments? Let's say you have a carload of cars and two or three of them are [fol. 316] damaged in shipment; does the dealer approach the carrier directly on those or the zone office?

A. Well, the dealer—not directly. He will obtain the necessary factual information in written form from the carrier, and then he applies to us for reimbursement through the zone office, and the zone office then—this is my understanding—will process it through our central office, who I presume obtains the reimbursement from the carrier.

Q. All right. Do your dealer agreements have a requirement that a dealer will carry in stock a minimum quantity of parts and accessories for Pontiac automobiles?

A. The Pontiac selling agreement states that he will carry an adequate stock of parts and accessories commensurate with his market.

Q. How do you accomplish this requirement; in other words, to see that this requirement is met by a dealer?

A. Again it is through counseling with a dealer. We judge it based on the amount of business that the dealer has done in the past in service, in parts, and we also base it on the amount of Pontiacs in operation in that area.

Q. In other words, just the quantity of parts that he is expected to carry is established on a percentage basis or it is computed in—

A. Mostly—excuse me.

Q. —arithmetically, in effect?

A. Mostly on a turn-over basis.

Q. Well, who is in charge of determining that this objective by a dealer is met?

[fol. 317] A. That is in—the responsibility for that comes under the various zone personnel, myself and my assistants, but more directly under my Zone Service and Parts Manager.

Q. Well, I didn't have that clear earlier. So that the Service Manager actually has cognizance—

A. He has a dual operation.

Q. To whom does he report his progress or lack of progress in the parts field?

A. He reports directly to me, and in addition a subsequent report would be forwarded to our Pontiac central office.

Q. Now, does he have any relationship or responsibility to anybody in the General Motors Parts Division?

A. No responsibility to the General Motors Parts Division, no.

Q. Well, their function is just to maintain a warehouse and distribute the stuff?

A. Their function is to distribute parts to the dealers as they order them.

Q. And I was interested in the problem of the special tools. I take it that dealers are expected to acquire the new tools that are occasioned or required for the servicing of new automobiles; is that correct?

A. That is in their contract with us, yes.

Q. Are they shipped automatically?

A. No; they are shipped only upon receipt of a signed order from the dealer.

Q. I was just interested in this regard: Have you ever had a dealer that didn't take tools that are obviously required to service a new model of automobile?

[fol. 318] A. Well, we would counsel with him and point out to him the advisability or feasibility of having such tools with which to work. If he still refused to purchase them there is—nothing is done about it.

Q. By and large you do expect and do obtain compliance with this requirement, don't you?

A. Normally we do, yes. The dollar amounts involved are very—normally very small."

Mr. Riley: I believe that concludes this deposition at line 11, page 33.

Mr. Williams: That is correct.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Riley: At this point, Your Honor, may I have this marked for identification?

(Whereupon, letter dated June 30th, 1958, was marked for identification as Defendants' Exhibit No. 11.)

Mr. Riley: Counsel, I have asked to be marked for identification Defendants' Exhibit 11 which is a letter with all of the exhibits attached thereto of June 30, 1958, which was the subject matter of a request for information concerning General Motors' various Divisions which are on file, and I wish to offer at this time some of the information in this letter pertaining to Pontiac, the zoning district originally of Pontiac is detailed, a sample ten-day report form and the 90-day report form is contained as an exhibit to the letter, as well as other documents that will be discussed later and have been discussed here before, including the balance sheet form of the balance sheet used by [fol. 319] the Pontiac dealers reporting each month to their respective zone offices.

Mr. Williams: Your Honor, may I speak briefly to Mr. Riley?

The Court: Certainly.

(Discussion off record by respective counsel.)

Mr. Riley: Counsel has suggested that two of the exhibits attached to what has been marked for identification as Exhibit 11 be removed since they are immaterial to this proceeding, and I am willing to remove from the exhibit as it is now identified, what are marked and attached to Exhibit 11 as Exhibit 2 and Exhibit 3 respectively. With that understanding, I offer in evidence Exhibit 11. It should be corrected that we are removing Exhibit 1 and Exhibit 2 as immaterial and not part of the transactions, not part of the activities of the Division whose transactions I included in the tax base here.

Mr. Williams: Are you going to offer any more at this time? I can take those out while you are reading the deposition.

Mr. Riley: That will be fine.

I had a couple of other comments to make, Your Honor. You will recall that we did offer Exhibit 3 and it was submitted as an exhibit here as part of the exhibit referred to in the Facts Stipulation. There are two or three items

that I would like to mention just briefly at this time. At [fol. 320] one point in the testimony of Mr. Ross he referred to a matter of parts warehouses not being located in the State of Washington. Of course, he was speaking in terms of the present tense and I thought I should mention too, Your Honor, this paragraph X of the Facts Stipulation makes that more clear as to the relationship generally of General Motors Parts Division and that during the audit period involved for Pontiac here, there was a parts warehouse situated in Washington located at Seattle. That is described in further detail in paragraph X of the Facts Stipulation. Also on page 12 of the deposition, Mr. Ross was discussing the function of the accounts of the departments, and I would like to make particular reference to section L-1 and page 1 of Section L-1 of the Exhibit 3 which consists of Portions of Pontiac Office Manual mentioned in Mr. Ross's testimony, and it mentions there the purpose of the Business Management Department is threefold:

1. To build and maintain profitable dealers amply capitalized.

2. To promote the sale of a constantly increasing volume of Pontiac products.

3. To enable our field organization to make more efficient dealer contacts.

And speaking in terms of the business management program at page 1, it states that the "broad objectives of the Business Management Program are to keep dealers on a profitable basis and to see that they are soundly capitalized. Briefly, the Business Management Program consists of setting up guides known as operating objectives and capital requirements and then checking by means of [fol. 321] field contacts to correct out-of-line conditions and maintain dealers' operations in accordance with the plans and requirements set.

"The dealer's monthly plan of operation is established in the dealer's place of business by the dealer. The Zone Business Management Manager should be present and where it is deemed advisable, the Zone Manager should also

be present. The plan should be set up at the beginning of the year, for the entire year and the month of January, and each month thereafter, taking into consideration the dealer's past performance, his potential market, and his physical facilities," and so forth.

At page 13, we were discussing the counseling, and a particular portion of the Exhibit 3 which I think the Court should be apprised of and aware of when he considers the evidence would be the procedures for acquiring a dealership and executing the direct Dealer Selling Agreements which are set forth in paragraph "N" of the Exhibit 3.

And particularly interesting when these witnesses say that they don't advise them that they may lose their franchise if they don't do thus and so, are the portions of this exhibit which deal with and involve the termination of Dealers Selling Agreements for reasons other than death or incapacity. That is described in part at page 10, section "N" provides this portion in part as follows: "Pontiac may involuntarily terminate a Dealer's Selling Agreement for cause, to be effective upon receipt of a Letter of Invol- [fol. 322] untary Termination by the dealer, or to be effective three months following receipt. Also, Pontiac may terminate without cause during July, August or September of any year where a dealer is operating on a Continuous type Selling Agreement.

"In order to make certain that the equities of our dealers are fully protected and that no dealer Selling Agreements are terminated without every consideration being given to such equities, as well as the responsibilties of the dealer to Pontiac Motor Division, there should be *NO* reference made to the involuntary termination of a dealer's Selling Agreement until the following procedure is adhered to."

And then it sets forth the procedures that a District and Zoning Manager must follow before they can make reference. Then it emphasizes again: "At no time should the subject of termination be used to induce the dealer to perform in accordance with the Selling Agreement. When it becomes obvious that termination of the Selling Agreement is justified and necessary to protect our interests, the Zone and Regional Manager and Assistant General

Sales Manager should carefully review the Zone Office file to make certain that the information contained therein is sufficient to suport a termination," etc.

The use of the cooperative advertising fund is discussed in great detail and I won't make any "reference" to it in section "J" and it can be perused by your Honor, but there is a very detailed procedure for cooperating at local [fol. 323] levels and engaging in local advertising detailed in Section "J" of Exhibit 3 which I think is quite important.

And one other reference, when we were discussing at page 30 in Mr. Ross's testimony, we were discussing Warranty Adjustments which dealers make pursuant to Manufacturers Warranty and warranties of the automobile purchases. And at Section "Q" we are talking about Service and Service Promotion. This is about a 20-page portion of Exhibit 3 and I want to refer, Your Honor, to Section "Q-3" which will become more pertinent further on as it makes reference to United Motors Service Division and it says: "This division provides warranty service on certain specialized automotive equipment such as Delco Remy, starting, lighting and ignition, etc. Dealers are to handle warranty transactions with them on those items not stocked by the General Motors Parts Department or factory warehouses. On items stocked by General Motors Parts Department or the factory, the dealer may either handle warranty transactions with United Motors Service or the Pontiac Motor Division."

And then it discusses in further detail various procedures by which this is accomplished and the other procedures used in accomplishing this objective of offering good services to Pontiac purchasers in order to maintain the Pontiac trade concepts.

Also, in "Q-5" a very detailed reference to procedures that are followed at the local level for investigation and correction of the owner relations cases, that is complaints [fol. 324] by owners in which after the product is sold to the dealer and after it is sold at retail, Pontiac at the local level within the State of Washington engages in the detail of maintaining customer relations and adjusting warranties, all of which we believe are material to the consummation of these transactions included in the tax base.

At "Q-11", it makes quite clear I believe the special tools that are required in the process of administering and servicing cars. It is quite clear that these tools are required by a dealer whether he lists them or not, and it states at that page uncategorically: "Shipment of New Model Special Tools to Dealers. At the beginning of each new model year, special tools are developed that are necessary to make proper service repairs to that particular model. Orders will be taken and submitted on blanks furnished by the Central Office. If the dealer is not on C.O.D. the tools will be shipped direct from the supplier and charged to the dealer's open account with Pontiac. If the dealer is on C.O.D. the tools will be shipped on that basis. Zones must indicate on the order blank whether the tools are going to be shipped open account or C.O.D.

"This only applies to new model special tools; all other tools and equipment are to be purchased direct from a supplier and the billing will not be handled through Pontiac Accounts Receivable."

I think that is relevant, of course, Your Honor, indicating again our contention that the control, the selection and [fol. 325] control and maintenance of the dealer organization is part and parcel of the Plaintiff's business activities which are necessary to maintain its market and which are necessary to the consummation of these transactions and do in fact play a large part in the consummation of these transactions included in this tax base.

Can I speak to Mr. Barnes for just a moment?

The Court: At this time we will take a recess.

Mr. Riley: Thank you.

(Morning recess.)

Mr. Williams: Your Honor, in connection with Defendants' Exhibit No. 11 as to which it was stipulated between counsel there would be deleted the exhibits 1 and 2 as being irrelevant to this action, it has also been stipulated by counsel for the Defendants and by counsel for the Plaintiff that reference to the Buick, Cadillac, GMC Truck and Coach shall also be deemed eliminated and stricken from the exhibit as though physically done; is that correct, counsel?

Mr. Riley: That is correct, Your Honor.

The Court: The record will so show.

Mr. Riley: I take it then, that I will formally offer 11 then at this time, Your Honor.

Mr. Williams: Yes, there is no objection in light of [fol. 326] those stipulations.

The Court: It may be admitted.

(Whereupon, the letter and attached documents marked Defendants' Exhibit No. 11 was received in evidence.)

Mr. Riley: Your Honor, I would like to have permission and also with the acquiescence of counsel to interrupt the publication of the deposition. I have one witness that is here with us and will only take 15 minutes.

The Court: Very well.

[fol. 327] A. E. Holmburg, called as a witness on behalf of the Defendants herein, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Riley:

Q. Would you state your name for the record and spell your last name, Mr. Holmburg?

A. A. E. Holmburg; H-o-l-m-b-u-r-g.

Q. Where do you reside?

A. 2407 View Place in Olympia.

Q. And by whom are you employed?

A. The State Tax Commission.

Q. And what is your capacity in the State Tax Commission?

A. Presently, Chief of the Excise Tax Division.

Q. That is for the State of Washington?

A. State of Washington.

Q. How long have you been employed by the State Tax Commission, Mr. Holmburg?

A. Since January, 1934.

Q. Are you familiar with the audits and assessments of the Plaintiff General Motors for the tax periods generally of 1949 to 1954?

A. Yes, I am.

Q. And would you state whether or not you are familiar with General Motors' Petition for Refund of Taxes that were paid by Chevrolet Division for the period of July 1950 through June of 1951?

A. Yes, I am.

[fol. 328] Q. Do you know whether or not the amounts of taxes paid, or paid during that period, were paid by the Plaintiff General Motors Chevrolet Division for the period of July, 1950, through June of 1951?

A. Yes, I am.

Q. Do you know whether or not the amounts of taxes paid, paid during that period, were paid by the Plaintiff General Motors Chevrolet Division pursuant to an assessment as the result of a Tax Commission audit, that is the period of July, 1950, through June of 1951?

A. Yes, I am.

Q. Did they or did they not?

A. They did.

Q. That is pursuant to an assessment?

A. Yes, it was.

Q. Do you have with you certain parts of your records, Mr. Holmburg?

A. I brought some to refresh my memory, yes.

Q. For the period I would like to have you refer to your records and determine whether or not those were paid voluntarily or whether they were pursuant to an assessment by you?

A. Which taxes are you referring to?

Q. The wholesaling tax on sales of automobiles to dealers in the State of Washington between July of 1950 and June of 1951.

A. The tax was paid on wholesale car sales during the period of August 1st, 1950, to pay—

Q. Excuse me just a moment. You mean voluntarily paid?

[fol. 329] A. Voluntarily paid, yes.

Q. Did you verify the amounts that were claimed for refund for that period?

A. Yes, I did.

Q. And where did you do that?

A. At their plant in Oakland.

Q. How did you proceed to verify these amounts that they had paid voluntarily and petitioned for refund?

A. Copies of the returns were checked back to the car sales register and the car sales register was spot-checked to the car invoices to the dealers.

Q. And what did your examination of those records disclose?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Williams: Just a minute, if the Court please, I would like to make an objection to any further inquiry along this line before I am too late with my objection. As I understand from counsel, the purpose of this interrogation is an attempt to prove on his part, to prove something that was stated I believe in his opening statement, that this particular item of the tax set forth in the Numbers Stipulation was included in the price bill to the dealers. Assuming simply for the purposes of the argument that that were true, the proof would be wholly incompetent and irrelevant, totally immaterial to this action for refund of taxes.

I rely in that respect upon the law respecting refunds; the law respecting the nature of the tax and the Tax Commission's rule itself. Taking up first the statute RCW 82.04.500 it says as follows:

"It is not the intention of this chapter that the taxes [fol. 330] herein levied upon persons engaged in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons."

Therefore the tax is on the wholesaler in this case, and it is his duty to pay it, and he bears it as part of his operating overhead under the statute.

Then we come to the refund section which is the section under which the appeal here is taken. It says:

"Any person, except one who has failed to keep and preserve books, records, and invoices,"

and so forth, it is not in point here,

". . . may appeal to the Superior Court of Thurston County, within the time limitation for a refund provided in this chapter,"

and so forth.

". . . In the appeal the taxpayer shall set forth the amount of the tax imposed upon him which he concedes to be the correct tax and the reason why the tax should be reduced or abated."

". . . The burden shall rest upon the taxpayer to prove that the tax as paid by him is incorrect, either in whole or in part, and to establish the correct amount of the tax."

With respect to the regulation relating to refunds which [fol. 331] is Rule 229 promulgated by the Tax Commission, states in part:

"If upon written application for a refund or an audit of his records, or upon examination of the returns or records of any taxpayer, it is determined by the Tax Commission that within the two years immediately preceding the receipt by the Commission of such an application or within the two years immediately preceding the commencement by the Tax Commission of such an examination, a tax has been paid in excess of that properly due, the excess amount paid within said period of two years will be credited to the taxpayer's account or will be refunded to him."

Now, the gist of all of that, of course, is that all that is necessary in a refund situation either before the Commission or before the Court is to prove that the taxpayer paid the tax and that it was improperly assessed against him. Nowhere is there any room within the statute or within the regulations or any relevant portions relating to refunds, or to what a taxpayer has done later on with respect to the taxes paid. If it is part of the overhead, obviously every taxpayer has taken it into consideration in respect to his pricing policy, and we would have utter chaos in the law of refunds in this state if there would be injected into it this principle that if some way an amount got into the price which was equal to the tax

[fol. 332] as being a part of his overhead, he could not recover. Almost every taxpayer who has voluntarily paid and then sought a refund as distinct from perhaps an involuntary assessment and Mr. Holmburg has said this was a voluntary payment. The tax we are here talking about was taken into consideration in pricing and added in; and it is up to him as to what he does with it in the event he is able to make any recovery with respect to his customers, but certainly the point is well-established that all that needed to be shown is that he paid the tax and that it was illegally assessed.

Nothing subsequent though that is pertinent under the statute or under the regulation, and it would be chaotic to get into such a line of inquiry as we have here which I think also is inconsistent with the Numbers Stipulation.

I think I have made my point, if Your Honor has any question about it, but I think that you can well see once we get into what happens with respect to the tax situation after the taxpayer has paid and been assessed—there being no burden on the taxpayer in an action for refund or for a claim for refund to show how he has handled it in his subsequent pricing procedures. I think this testimony would be incompetent and irrelevant to the issues here, and maybe subject to other objections, but I think that is the fundamental one, and I think it is also inconsistent with our Numbers Stipulation where we said that unless this was properly included in the base, we were entitled to recover a certain amount of money. But I think [fol. 333] the other is the fundamental situation which I certainly think is well taken.

Mr. Riley: Well, Your Honor, this item I am discussing is, of course, referred to in the Numbers Stipulation. There would be nothing inconsistent with that which I would like to discuss and offer testimony concerning from the Numbers Stipulation, the item I am referring to generally, Your Honor, to begin with is $71,207.35 item which is referred to in Exhibit "C". You will note about a third of the way down the page of Exhibit 7, Defendants' Exhibit 7,

is noted that during January, 1950, and June, 1951, this amount of tax was paid $71,207.35.

As Mr. Holmburg stated these taxes were paid without assessment by the Tax Commission and then Petition for Refund was filed by the taxpayer. This is discussed in paragraphs XI, XII and XIII of the Numbers Stipulation.

Now you will note that the Numbers Stipulation, Your Honor please, in turn refers to a Tax Commission Memorandum which is included and marked Exhibit "C".

A little bit more background here, the record has got a little confused and a formal petition we never did file a formal petition, but we concede that one was filed in the form of tax returns and we concede that the taxpayer has timely filed his petition, but that they were rejected as set forth in the Defendants' Tax Commission Memorandum attached hereto and marked Exhibit "C". In view of this stipulation "the ground that said claim was not timely filed shall be regarded at the time of the trial of this case." [fol. 334] I think implicit in that statement is that they nevertheless are still relying upon the further statement and further grounds set forth in this Exhibit "C" and quoting now from paragraph 2 of the Exhibit "C" of the Numbers Stipulation which says as follows: "Assuming, *arguendo,* that such a petition was filed in due time, the record clearly discloses that such a petition would have been denied for the same reasons expressed in this Commission's memorandum Order dated May 27, 1954, and affirmed June 24, 1954." That is Exhibit A and Exhibit B of the Numbers Stipulation.

Continuing: "with respect to sales of Chevrolet automobiles by the taxpayer's Chevrolet Division. It appears from the Commission records and files that taxpayer's business operations were essentially the same during all periods involved in the assessments and petitions for refund described in the plaintiff's Complaint, except that during certain periods of the audit periods taxpayer maintained offices in Seattle for its Chevrolet Division and parts warehouses as well.

"It also appears that during the periods in question the taxpayer 'passed on' the tax in question to its franchised

dealers by collecting from them a charge on each car in addition to list price, which charge was equal to the total of taxpayer's business and occupation (wholesaling) tax liability prorated to the number of vehicles sold in Washington during the audit period in question. Such charges were referred to as 'Washington Handling Charges'."

[fol. 335] The purpose of the testimony of Mr. Holmburg and the purpose of the last question was to lead into this very area to show the manner in which it was passed on to dealers. It was excluded from the wholesale selling price of the automobile and treated as separate non-taxable items in the taxpayer's own books and accounts and records.

Our position being, Your Honor, that they don't pay that tax. They collect it from someone else; they have already been damaged. Now, it is true this may become irrelevant because we believe that the period of 1950 through 1951 is the same as all the rest of the periods and that all of them are properly included in the tax base.

I think that in any event the only reason I offer this testimony is that should, Your Honor, conclude that the tax periods subsequent to 1951 which were assessed by the Tax Commission audit and order of assessment, should you conclude that those transactions were improperly included in the tax base, then as a last recourse, a last ditch stand so far as our position is concerned at least to this $71,000, the taxpayers have shown no damage and have no standing to seek refund of taxes which they did not pay themselves which they collected from franchise dealers.

The Court: The objection is sustained.

Mr. Riley: May I for the record make just a little further offer of proof of the Defendants, Your Honor please.

[fol. 336] The Court: Yes.

Mr. Riley: Mr. Holmburg from the last question and the questions which would naturally follow therefrom would disclose: That the taxpayer's invoices which were examined, invoices to dealers which were examined, disclosed in the selling price of a vehicle that a special charge was charged to the dealer and was designated as Washington Handling Charges, and that the taxpayer's representatives and its accounting office in Oakland freely indicated that the purpose of this charge was to pass on to the dealer and to

collect from the dealer the amount of the business and occupation tax, and that it was so collected, and was so accounted for, and that taxes for this audit period which were paid voluntarily prior to assessment by the State Tax Commission were so paid, and further that this account, the total amount of these charges which were collected from the dealers were not included in the gross selling price of the automobile by General Motors' own accounts or by the Tax Commission's audit subsequent thereto.

That would conclude my offer of proof, Your Honor, and I would be unable to question Mr. Holmburg any further if the objection is sustained.

The Court: The objection is sustained.

Mr. Williams: Your Honor, I would add too on the basis of the offer of proof, on the basis of which you sustained the objection, I also offer the ground that the evidence would not be the best evidence, the best evidence being among other things, the books, records and invoices themselves. [fol. 337]

The Court: Possibly all of the objections raised are the Court's belief that they are well taken, but in addition to that, there is another thing that appeals to the Court, that the legal incidence of the tax have fallen upon the Plaintiff and regardless of upon whom the economic burden may fall, the party who is aggrieved and who has the right to raise the question is the one upon whom the legal incidence has fallen, and that probably involves a very different tax situation. I think that would leave an inference with the facts probably as well explained in the case of King & Boozer versus Alabama as anywhere, and that is, I think, an excellent description of that legal philosophy.

I do feel that the legal increments has fallen upon this Plaintiff, that they are the ones who are aggrieved whether they pass the economic burden on to someone else or not because the person who merely gets the economic burden is not entitled to raise the question. That was not only raised in King & Boozer, but in many of the other cases.

I believe the objection is well taken to that ground as well upon the grounds raised by counsel.

Mr. Riley: Fine, Your Honor, I won't say anything further. I appreciate, Your Honor's position in the mat-

ter. I quite agree that the person to raise the question would be the person upon whom the incidence of the tax falls; on the other hand, if a person does not pay a tax; he cannot state a cause of action, that is my position. By [fol. 338] the law, it would have to fall on him; it hasn't fallen on him if he hasn't paid the tax. That was my theory in offering this testimony.

Thank you, Mr. Holmburg. You may step down. May Mr. Holmburg be excused?

Mr. Williams: He may be.

Mr. Riley: Thank you.

(Witness excused.)

Mr. Riley: Are we ready then to proceed with the publication of Mr. Reeves' deposition? Examination was again taken pursuant to stipulation and Mr. Reeves, I might state for the record, as was the other witness, is an adverse witness and was examined by me on Direct Examination. We can commence questioning at line 7 of page 3 of the deposition of Reeves taken in Portland, Oregon, November 4th, 1959, beginning at 3:00 p.m., room 450 of the Multnomah County Court House.

Mr. Williams: Pardon me. I don't know if it makes any difference right now, we don't need to belabor it. I do not think Mr. Swanson was an adverse witness. I just state that for the record. He was not employed by our company.

Mr. Riley: I might concede that Mr. Swanson would not constitute an adverse witness. I think the record speaks for itself.

[fol. 339] The Court: The problem is academic, there was no question raised as to the form of the question to Mr. Swanson and that would be about the only difference it would make anyway.

Mr. Williams: I just thought to keep the record straight. I just wanted to keep the the record straight. I sometimes may be a little asleep and I don't realize it until it has passed. I just wanted to make the record clear.

DEPOSITION OF JOHN REEVES READ INTO RECORD

(Reading of deposition of John Reeves, as follows: Mr. Malone read the questions and Mr. Gagliardi read the answers.)

By Mr. Riley:

Q. Where do you reside, Mr. Reeves?

A. In Portland, Oregon; that is, Raleigh Hills, a suburb of Portland.

Q. By whom are you employed?

A. Oldsmobile Division of General Motors Corporation.

Q. And in what capacity?

A. Zone Manager.

Q. And how long have you been in that position?

A. I have been Zone Manager since the 1st of June.

Q. Would you relate in inverse chronological order, or however you wish, your various capacities that you have been employed in since 1950?

A. Well, I can start at the beginning. During 1950 I was a District Manager.

Q. And where were you?

[fol. 340] A. In Cincinnati Zone. In 1955 I became Assistant Zone Manager in the Philadelphia Zone. In 1956 I became Assistant Zone Manager and I was moved to New York, and about January the 15th of 1957 I was transferred to Chicago as Assistant Zone Manager and I remained there from January of 1957 until June—the 1st of June of this year. I was Assistant Zone Manager there, too.

Q. And you became Zone Manager here—

A. That is right.

Q. —this past spring.

Would you describe your duties and responsibilities in your present position as Zone Manager?

A. Well, I would say that I am responsible to administer the zone and all its functions with sales and service and public relations.

Q. What are the geographical limits of your zone?

A. We cover the State of Washington and the State of Oregon, a portion of the State of Montana, just beyond Great Falls, the line lies between Butte, Montana and Great Falls if you draw a line north and south, and also a small portion of Idaho, which includes Boise.

Q. But you do cover the entire State of Washington?

A. Yes.

Q. Has this geographical jurisdiction, to coin a phrase, been in effect since 1950, do you know?

A. That I couldn't tell you. There possibly could have been zone line changes during that period. I would know nothing about that.

Q. As far as you know Washington has been in the Port-
[fol. 341] land Zone—

A. As far as—to the best of my knowledge.

Q. At any time since 1950, or even at the present, does Oldsmobile Division of General Motors have any offices in the State of Washington?

A. No, I don't believe we ever have, because I joined Oldsmobile in 1947 and as I remember it there was always a Portland Zone but there was no Washington Zone; just Washington, D.C., of course.

Q. Do you warehouse vehicles in the State of Washington at the present time, or store them there?

A. Well, it would all depend. At new car announcement time we might have cars go into the warehouse directly for the dealers and to be distributed from there, because we don't know what body types they want and they might want a particular body type, and that way we can try to help them and give them a car they would rather have rather than just assign a car to them wherever possible.

Q. During the year, aside from new models, do you have occasion to store vehicles inside the State of Washington?

A. Well, since I have been here I believe we have had a few cases where we had possibly about eight or ten cars that might have been in there, but that is not usually the rule; usually there is nothing in the warehouse.

Q. How many people do you have in your zone organization?

A. There are 22 including myself.

Q. I take it the zone office is broken down and is organized in terms of districts within each zone?

A. Yes; we have six districts.

[fol. 342] Q. How many of these are situated in Washington or cover portions of the State of Washington?

A. District 2 is completely in the State of Washington; in other words, he covers no further, everything he would cover would be in the State of Washington; and District 5,

which covers a portion of Idaho as well as part of Washington.

Q. The individuals you refer to that are in charge of these Districts; I take it, are District Managers?

A. That is correct.

Q. Now, going back to your responsibilities as Zone Manager, you made reference to sales as part of your responsibilities. Is that expressed in terms of sales objective or sales quota? Would you explain?

A. No; it is to develop—actually what it amounts to is developing the market in a particular area to a point that would be comparable to the average in the country, at least to that degree, and to a greater degree if possible.

Q. Then how do you proceed to do that; what are your procedures?

A. Well, we set up at the local level, and possibly at zone level and national level at various times, there are meetings held to develop enthusiasm, and we also have meetings whereby we try to guide the dealer's thinking as to his responsibilities with regard to managing his own business; and primarily that is the big thing, because if a dealer has—if the dealership is properly managed it will be a profitable dealership and he will sell enough cars to get [fol. 343] a fair share of the market.

Q. Can you state do you have occasion to visit your dealers, the dealers in your zone?

A. Yes.

Q. In their place of business?

A. Yes, uh-huh.

Q. How many dealers do you have in the State of Washington in your dealer organization, approximately?

A. I have approximately 126 in the zone. I would say in the State of Washington we have approximately—oh, probably run around between—the figure would run between about 37 and 45, right in that area.

Q. The District Managers, do they have offices within each District?

A. No, no; there is no office except the Zone office. They operate out of their homes.

Q. And their relationships with the dealer are uniformly conducted in the dealer's place of business; is that a fair statement?

A. Yes, I would say yes; that is exactly what it is.

Q. Going back then again to your responsibilities as Zone Manager, you have indicated the mission of developing your market. How is the performance for your zone organization recorded and reported to your superiors at the Regional level? Regional is the next organizational level, is it not?

A. Through registration through the R. L. Polk registration, which is used by all distributors and all manufacturers in the automobile business. They all use—most [fol. 344] of them use R. L. Polk, I would say, with possibly one or two small exceptions.

Q. How do you define this, as your sales potential or quota or as what?

A. No, it wouldn't be exactly that. If you see a market, a market of X number of cars in our medium price field, we would look at history and what we have been doing, the pattern that we have been setting, and we feel that should be about a fair share. However there is no such thing as any stop to what a dealer can do in managing his own business to secure an even greater share of the market; but normally if he is not securing a fair share his is not making any money to make his investment profitable, too.

Q. In this regard, suppose you have such a dealer that isn't making a return and isn't meeting this sales potential that has been determined should be his share of the market,—

A. Uh-huh.

Q. —what steps does your organization take to attempt to correct that deficiency, or do they?

A. Well, we would meet with the dealer and discuss his operation and try to find weak points in his operation. Possibly he is not securing enough service gross volume to offset his fixed overhead. Possibly he might have a used car manager or new car manager who doesn't have a keen enough knowledge of the market itself and it is costing the dealer money. He might have salesmen who are not being guided properly. All these things tie in together, and these are the things that we review with the dealer in [fol. 345] an effort to get him to step up to the job of making himself some money, because he is only in business to make money.

Q. Suppose you have this dealer and you find that his service is not producing and is consistently showing a loss, do you have any services or any training available or any people available to assist him in overcoming that?

A. In the service department?

Q. Yes.

A. Yes, we hold—well, at a dealer's request, or if we see that he needs some help, we will set up a service clinic where they will work with the people in the organization to point out how to properly run their service department.

Q. Would this be conducted at the dealer's place of business?

A. Yes.

Q. The same thing with respect to the used car department that was losing, do you have services available to help them there?

A. Yes. Well, we talk to them about various things. For instance, many dealers have used car facilities that are—don't have blacktop on them. Well, women don't like to stumble around on stones. They might be very dimly lit. When you get right down to it the things that we talk to the dealer about are things that are there and he probably knows they are there but he can't see the forest for the trees. In other words, we bring to his attention—he is used to living with these things and by bringing them out [fol. 346] in the open and laying them on the table he has a better opportunity of viewing his whole business and maybe find the weak spots that he doesn't think are there; and this is primarily a big portion of our business, because if we can get across to the dealer and point out his weak points and then help him develop his weak points, the sales volume and having a profitable dealership come together, I mean they automatically come—stem from that.

Q. Now, once again regarding this sales potential and volume, is your zone potential then broken down in terms of districts, and in turn in terms of dealers within the districts?

A. It is based on their performance over the past few years. In other words, the dealer's performance is taken into consideration—now, if it was '56-'57, or '57 and '58, and his percentage share of the zone would be more or less

simply the job that he is doing and not the job that we set up for him. If he is doing a greater job than that, then his percentage share of the zone would be greater, but then he is not obligated to take that percentage of cars himself. All he does then is refuse to sign any orders, which is his prerogative.

Q. What variety of reports do you receive from dealers in terms of sales volume?

A. The ten-day report, and we have a form called a projection, that we get very few of; I would say we don't even receive back in the zone office 20 of them; I mean where they are projecting what they feel they should have on [fol. 347] hand and sell over a three-month period. There actually has been some talk possibly of even doing away with that report because we can't get a good enough idea from enough dealers; they just won't take the time to do it.

Q. In the '50-'51 period, 1950-51 period, did you as far as you know, in your other capacities as District Manager, obtain pretty uniform compliance with the use of that form from dealers?

A. No; even at that time it was the same way; dealers just didn't want to take the time to complete the form.

Q. They do submit, I take it, the ten-day report?

A. The ten-day report, yes.

Q. Do your District Managers play any part in preparing these reports?

A. No. A District Manager might sit down with a dealer while he is making up a projection, and the dealer might say, 'Well, gee, I think maybe I might need so many of these,' and the District Manager might counsel with him as to whether he needs that many of that body type and would ask the dealer maybe why not check his sales of the particular body type to see whether or not he is going in the right direction.

Q. Do the District Managers prepare or submit these varieties of reports; do they prepare projections for their districts?

A. No.

Q. What variety of reports are they required to submit?

A. Actually we have—the thing has varied over the years. Maybe a District Manager's daily report, which has the

[fol. 348] market on top and then he writes in the things he has discussed, and the zone department heads would initial the corner of it. However, in my particular zone I never have a form of that type; I don't particularly use it. If they want to send me a note on a form like that, that is all right, but we just have inter-office mailgram if there is something that they want to—in other words, just like write me a short note.

Q. Within Oldsmobile Division of General Motors how is the performance of the District Managers determined and measured?

A. Well, I would say by an increase in market penetration in the area, plus the fact we look at the type of dealers—what has he done with the dealers? Has he made them more stable and more secure? Do they have a better managed retail organization? There are lots of things. It is not just based on the volume itself, because the man with the highest volume is not necessarily the District Manager who is picked for promotion anywhere in the Zone. There are many other things that develop into it. I would say to my way of thinking it would be his ability to work with dealers in such a way as to give the dealer a better operation, to make them a more profitable and stable dealer and still secure a fair share of the market.

Q. O.K. I wanted to ask you, by the way, how many people in your zone organization presently are engaged full-time in the State of Washington in their work?

A. Full-time?

Q. Yes.

[fol. 349] A. I have one District Manager and—

Q. And how many part—excuse me.

A. Let me carry on a little further. I have another District Manager who, I would say, spends possibly sixty—sixty to seventy per cent of his time in the State of Washington and the rest in Idaho,—

Q. And—

A. —and then there are two service reps; one spends all of his time in the State of Washington and the other is a kind of a mixture, he has part of Montana and Idaho, that sort of panhandle of Idaho,—

Q. I see.

A. —and part of Washington, so I would say that he—on the whole he probably spends maybe forty—forty or fifty percent with the State of Washington.

Q. The service representative that you mentioned, does he have jurisdiction or does he have responsibility for the parts business of your Oldsmobile dealerships?

A. Not particularly, only it is—it is a matter of expediting parts in case of a dealer tie-up where we might not have the part, or the dealer orders a part and he is not able to get it we would try to help him along and help the customer, for good customer relations we try to expedite it, make a phone call to Lansing or send a wire to see if they can possibly find that part for us, or we will try to call other dealers in the zone to try to pick up that part for him to get the customer on the way, because it is not a very good feeling for the customer to sit there.

[fol. 350] Q. Your dealers are required and do make and execute a dealer's selling agreement, don't they?

A. Yes.

Q. And these selling agreements do require generally a dealer to maintain what is termed an 'adequate' stock of Oldsmobile parts, is that right?

A. Yes.

Q. How do you determine whether they have an 'adequate' stock of Oldsmobile parts?

A. Well, normally—there is no set way of really doing that. I mean as far as we are concerned we don't have what is known as a parts manager with Oldsmobile who does any work of that type. The dealer actually sets his pattern. On the other hand, if a dealer is continually out of something, or his service volume is increasing, just by talking to his parts manager, and you find he doesn't have enough parts to take care of his current business and the people he has to—can't take care of the number of people he is getting into his service department, it makes it difficult then because the parts manager has to go out and buy from another dealer and it is more expensive because it costs the dealer money, so most parts managers operate on approximately a 90-day turnover.

Q. I see.

A. That is usually their method—I think parts managers that have been with the various divisions operate in that manner.

Q. What is your objective in requiring this 'adequate' stock, or looking to at least a 90-day turnover as a margin? [fol. 351] A. Well, I think it is necessary for the dealer to protect his customers, and I believe it is only good customer relations on our part.

Q. Is it fair to state that the objective then would be to offer proper service to Oldsmobiles to develop the Oldsmobile name?

A. That is right; that is right.

Q. By the way, do you have some written manual which describes the missions and task of your organization; is there such a thing as a zone office manual?

A. Zone office manual, yes.

Q. Does that describe and define your responsibilities and those of your service representatives and the District Managers?

A. Yes.

Q. Your dealer agreements generally require a dealer to establish and maintain a service department adequate—an adequate service department; is that a fair statement?

A. Yes, I would say that that is our desire. In all cases it is not true.

Q. And your service representative, then, is the man of your organization that visits the dealers to see that—

A. Yes.

Q. —this part of the contract is met?

A. Well, it is not—it is not only that. It is to see that the dealer's place of business—see it is a clean place; and after all, people who do buy quality products such as ours normally expect to drive into a place of business that is representative in their mind with the type of product they [fol. 352] purchase. They don't like to go into a dirty old garage, and in most cases the service reps will talk to them and try to get them to do a little painting; and as I said before, the dealer might have been looking at it for quite a while, and just by talking to the service manager he might have the dealer to agree and just decide to try painting, and after he paints it he decides he likes it and his customers like it.

Q. Now, regarding the development of your dealer organization, I take it you have, as Zone Manager, responsibility for acquiring and maintaining a dealer organization?

A. That is correct.

Q. And what are the criteria that you have for the selection of a new dealer for a franchise area that happens to be open?

A. If the area is open?

Q. Yes.

A. Well, normally we would have applications from people who have money; or the names of people who have called who have shown an interest in the dealership, or we might even run a blind box ad and select from those people who we think would perform under the quality dealer program for Oldsmobile, who would do a good service and sales job, and a profitable job, and who would probably be properly capitalized."

The Court: We will recess until 1:30.

(Whereupon, a recess was taken at 12:05 p.m., December 16, 1959 until 1:30 p.m. of the same day.)

[fol. 353] AFTERNOON SESSION

1:30 o'clock p.m., December 16, 1959

(The Court reconvened pursuant to adjournment. All parties present.)

Mr. Riley: We were at line 9, page 17 in Mr. Reeves' testimony.

The Court: Yes. Line 8 had been read and line 9 has not yet been read.

Mr. Riley: Thank you, Your Honor.

(Reading of Mr. Reeves' deposition continued:)

"Q. Now, you mentioned the term 'quality dealer program'.

A. Yes.

Q. Would you describe this program, what it means?

A. Well, it is a program whereby we render the customer service, and basically inherent in it is the fact that they will operate their business in a manner that is not considered unethical and be ethical businessmen and an actual member of the community, be well capitalized, in other words not a shoestring operation who might take advantage of the public and in any way ruin the reputation of Oldsmobile Division are the things that we look for, plus the fact that the man must have a good knowledge—I feel that he should have a good knowledge of the automobile business.

Q. Is it fair to state then that your objective in develop- [fol. 354] ing a quality dealer organization is to promote and maintain the Oldsmobile trade name?

A. I would say yes.

Q. How many dealers in your organization at the present time utilize Motors Holding Corporation financing?

A. I would say no more than one, two—about three or four.

Q. How many of those in the State of Washington?

A. Just one, I believe.

Q. Is this—

A. I believe it is only one.

Q. —percentage of use of Motors Holding Corporation, to use that term loosely, pretty representative for the period since 1950, or has it—

A. Not necessarily. In fact, most dealers borrow outside capital through banks and lending institutions, or borrow money from individuals who will possibly build a building for a dealer and then set up a certain rental figure, and there is more of that actually than there is through Motors Holding. In other words, should someone want to set up a Motors Holding dealership it would be his job—I would tell him where their offices were such as I would tell him where the First National Bank is, or whatever bank they wanted to do business with, but it would be their job, as far as I am concerned, the way I operate,—

Q. In other words,—

A. —for them to contact Motors Holding themselves, tell them what they are interested in, that they have a possibility of possibly securing a franchise. Then I would

look into the matter, and after that, just because Motors [fol. 355] Holding would agree to go along, that is no reason I would sign them as a dealer in effect. If I had someone I thought was more qualified, who had a better cash position, and someone I though could really uphold the quality dealer program, he would be the one I would sign.

Q. I was interested in the frequency of contact that a District dealer will have with dealers in his district.

A. The District Manager?

Q. Your District Manager.

A. I would say a District Manager would contact his dealers once a month, with the possible exception of a very small point that might be a considerable distance off by itself, maybe three or four hundred miles by itself, where the business annually had a sales volume of maybe six or seven cars a year or something like that.

Q. What would be the duration of these visits, average?

A. Oh, I would say it could be a couple hours. It might last all day if they were setting up a program and, say, they were looking at the used cars and they would go through and analyze—help the dealer analyze his used car stock and look the cars over as to how they were being serviced and how they were being prepared for retail sale, and going into analyzations of that type you could very easily spend a day and possibly longer there working with the dealer, going over all the facets of that portion of his business helping him.

Q. Do the parts or the service representatives visit their dealers with about the same frequency as District Managers?

[fol. 356] A. Not at the same frequency because they have larger areas to cover.

Q. I see. Do you have District meetings of your dealers or—

A. No; there is no definite pattern to that. If we should possibly have some sales program that we were going to kick off with a lot of enthusiasm or something we might have a meeting of that type, or possibly—well, we haven't had any since I have been in this zone yet. I have been here a number of months now and we haven't had one actually, with the exception of the first or second day I got here we had one.

Q. Is that a zone or district level meeting?

A. That was a zone meeting.

Q. How about the District Managers themselves, do they conduct them?

A. Very seldom, unless it might possibly be a little training program of some kind for the accountants or possibly maybe something for the sales managers where they might sit down and talk things over and try to get ideas from one another.

Q. Does Oldsmobile have a—do they promote sales contests between dealerships, or between salesmen within the dealerships?

A. They have, yes.

Q. How frequently are these handled?

A. I would say there would possibly be once or twice a year.

Q. I was interested in your annual showing of a new model. That, of course is established at the national level [fol. 357] on one national day, I take it?

A. Yes.

Q. Your pre-showing, that is your introduction of the new models to the dealers, is that conducted at a district or zone or regional level?

A. To the dealers it is—it has been here at a regional level. Of course, that could vary. They try to look at geographical locations when they take that into consideration.

Q. How about training of the service people of the dealerships with respect to new models; is that conducted at a regional or district level or is it—

A. Well, that would be conducted by the zone through the service representatives, and possibly the District Managers might talk to the dealer about sending a man to school to become familiar with the new model.

Q. Generally in your advance showing, I take it, do you generally obtain attendance of all of your dealerships, or at least of representatives?

A. Some of them won't attend, they simply have a considerable distance to drive and they refuse to attend; but normally we have pretty good coverage on the current model car because most dealers certainly feel they want

to take care of their customers by having their mechanics have every knowledge of the car and the changes made in the car.

Q. Do you have any other service training available for dealerships at the district level?

A. Service or sales?

Q. Service.

[fol. 358] A. Service, yes. We hold—periodically we hold schools on body work and items of that nature out at the Tigard Training Center and dealers can avail themselves there of the opportunity of developing possibly an apprentice body man and send them out there for a few days where he can gain quite a bit of knowledge.

Q. Suppose you have a dealer that is consistently showing a loss in his service department and you have had customer complaints from customers in his franchise area or zone of influence, and you have analyzed his operation and find that it is undermanned and undertrained, what procedures would you invoke to correct that situation, or would you?

A. Well, basically you would, basically you would, but the only out you have actually is to sell them on the idea that he should have it, that it is to his benefit to have his mechanics properly trained to give his customers the proper service.

Q. Have you ever had occasions where you were not able to obtain dealer compliance with your recommendations?

A. Oh, yes.

Q. What happens then?

A. Nothing happens. You just continue to keep trying. I mean if he—maybe a year from now maybe he will pay a little more attention to you and maybe he will do it. There is nothing—I can't actually force him to send anyone to school, but we definitely do not give up trying to sell him on the idea of having his men attend school to properly take care of the customers in his area.

[fol. 359] Q. Going back to the advance showings,—well, let's just say these things that you provide to the dealer and salesmen, do you have certain printed materials and sales promotional materials that are provided by Oldsmobile to the dealers?

A. You mean at announcement time?

Q. Yes.

A. No, not at announcement time they are not being provided with the program—I mean the stage presentation or something of that nature.

Q. How about little pamphlets showing the new models, colors, equipment, and so forth?

A. I don't believe they are. We hand those out at announcement time.

Q. Well,—

A. Now, depending on what you call the announcement date. Are you talking about the announcement date that we have for the dealer organization and their sales organization, or the announcement date to the public?

Q. I am talking about the announcement date to the public.

A. Oh, the public. Then the dealers would have pamphlets to hand out, yes.

Q. What other promotional materials? Do they have standardized themes and banners and—

A. Yes, we supply—

Q. —place cards?

A. We supply them with some window trim. Then we have various flyers we send to the dealers pertaining to things they can order on their own, and they pick out the [fol. 360] items that they feel will fit in their showrooms. In other words, something that might fit in a large dealership won't fit into a smaller dealer so it is ridiculous for a dealer to order anything of that nature, and then they send those in.

Q. Does Oldsmobile have a cooperative advertising system in effect?

A. No, not now.

Q. Did they in '50 and '51.

A. Yes.

Q. And would you describe how that works?

A. Well, both the dealer and Oldsmobile would contribute a certain amount for each car that the dealer purchased.

Q. How was that amount used?

A. It was used for advertising in our national papers and magazines, and at that time radio and some TV and items of that nature.

Q. Are your dealers expected to conduct their own advertising program at the local level?

A. At the local level it is up to them. If they feel they need that type of advertising, then they will on their own set up some local advertising advising the customers why they should buy from them. In other words, we do most of the institutional advertising; we have our TV programs and we have local ads in their paper, but it is an ad, that is to say, for Oldsmobile in general. The dealer then might place his ads giving the public some reasons why they should trade with him, which would be called advertising at the local level by the dealer to seek more customers.

[fol. 361] Q. In other words, whatever he chooses to make of them?

A. He uses whatever he wants. We have available from time to time a picture of the car or something like that we can give him a cut of, but as far as the rest of it he does that on his own. Those are just the sales advertising that we supply our dealers.

Q. Then as far as general advertising of the Oldsmobile product, that is all conducted by Oldsmobile?

A. By Oldsmobile Division.

Q. And you have stated a policy of reaching the local level of advertising media. Does the company have such a policy?

A. Well, they advertise in all areas so that all dealers will benefit, in accordance with the size of their market, from this type of advertising; I mean benefit from the institutional part of it.

Q. Are you advised as Zone Manager in advance of advertising programs and campaigns that the company undertakes?

A. Once in a great while we might have a meeting and there might be some discussion of it, but normally those are sent direct—are handled directly by D. P. Brothers with the newspapers.

Q. I was interested in the ordering procedures by which a dealer acquires his inventory. Just describe how a dealer proceeds to acquire an inventory.

A. Of automobiles?

Q. Right.

A. Well, we supply him with a complete folder at the [fol. 362] start of the year, and then usually the dealers later will buy a feature Folio book with a permanent cover —they can use the other but the permanent cover will last them a long while—which has your trims and the options on the cars, and then he writes up wholesale car orders in the way he would like to have them, and he takes those orders, after he has written, say, a spread of our three series, 98's, supers and 88's, then he takes what we call the preference list and on that list he will list these cars in the order that he would like to have them, the most important car first. Naturally he would have his sold orders at the top, if he had any sold retail cars that were ordered by the customer. Then he would go down and he would look at his stock or decide what models he would want and then he would place blank orders for those and then place them onto the preference list in the way he would want them, and then we would do our best to give the dealer his car in that manner. You can't stick close to it because of body styles and certain trims, you might run out of trim or be short on one particular body style and you can't give it to them, but that is the way in Oldsmobile, we try to get the Dealer what he wants.

Q. Does the District Manager receive the orders before they go into the zone office?

A. No; unless they happen to be there. There might be an occasion where the dealer might say, 'Well, So-and-so, I want to order some cars. Would you sit down and help me figure out what I might need?' Well, the District Manager might list what the dealer has in stock, and then dig [fol. 363] further to find out what the dealer might need to balance out his stock; but as far as writing them, he might write them in effect but he would just put the equipment on that the dealer would want on the automobile and that is it. Then it is the dealer's responsibility to get those orders to us at zone level.

Q. Does Oldsmobile provide or offer its dealers plant lay-out services? For instance, I notice that—let me see here, Chevrolet has a requirement that says, 'Seller will,

upon request,'—omission—'furnish dealer suggested building plan and lay-out.' Do you have such a service available to your dealers?

A. If the dealer would want to have, oh, a little help in his planning we could probably have someone come out from Lansing, someone who is familiar with various types of buildings, and sit down with the dealer and go over the various physical facilities he might need. Then it would be actually the dealer's decision as to what he would want. I mean as far as—we certainly can't tell a dealer he has got to have a building 80 by—

Q. I take it you do this infrequently?

A. Very infrequently, because most dealers have an idea what they want. They might ask you a question of, well, what is a good standard size for width? Well, we know that 60 is a good standard size, but with about 70 feet in width you can maneuver cars much better inside; I mean things of that nature, or how many lifts they might need, items of that type.

Q. What are the terms of selling these automobiles? [fol. 364] By that I mean, once the automobiles are ordered and they are shipped from the factory, under what terms are they shipped?

A. Well, we receive it—at the factory level we receive cash for the cars from whoever the dealer has chosen to finance with. In other words, it could be CIT, it could be GMAC, it could be a local bank with whom they have set up financing arrangements, it could be anything of that type; and if we had a dealer who was in such poor financial position that he was cut off from his supply of outside money then he would have to send us a check.

Q. Do you use standard invoices?

A. Yes.

Q. And the standard bills of lading, I suppose?

A. Yes.

Q. The selection of the carrier is always done by the factory, I take it?

A. The dealers have an option on their wholesale car order, they can check truck or rail; but in some cases it is not feasible to send merchandise to a certain area by truck or by rail, it depends on the area involved, but if both are used they have the prerogative of either one."

Mr. Riley: That concludes the deposition at line 4, page 29.

Mr. Williams: That is right.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: That is all the depositions you have?

Mr. Riley: Yes, Your Honor, I had one other item to offer and that is to publish the Interrogatories and Answers [fol. 365] to several of the Interrogatories there contained in the file.

Mr. Williams: I have the original of that here, John.

Mr. Riley: Very well. At this time the Interrogatory No. 1 and Answer No. 1 is somewhat meaningless, and I would like to publish Interrogatory 2 and Answer 2, Interrogatory 3 and Answer 3 are set forth in those very words in the Facts Stipulation and so that can be amended or admitted or repeated, I don't care. I would like to have Interrogatory 4 and Interrogatory 5 and their respective Answers published, and I would suggest there are two exhibits attached to the Interrogatories, and I would suggest that those be separated from the Interrogatories themselves and established as separate Exhibits at the time of publication of those answers, and for clarity and for continuity I would offer the Exhibits.

Mr. Williams: Your Honor, may we have a moment to consider the offer?

The Court: Certainly.

Mr. Riley: The last part of paragraph 8 on page 7.

Mr. Williams: Your Honor, may I speak to counsel just a moment, it might save time?

The Court: Certainly.

(Discussion off record by respective counsel.)

Mr. Williams: Your Honor, I presume first this should be filed with the Clerk and then I wish to make an objec- [fol. 366] tion to part of it.

The Court: Very well.

Mr. Williams: Your Honor, referring to Exhibit B which is the last page on the entire thing, we would not object to offers of the Answers as made by counsel and to Exhibit

A which relates to the Divisions which are here involved, but do object to Exhibit B as being irrelevant and immaterial to the issues here before, Your Honor, which do not concern the Divisions there listed without naming them, they speak for themselves, but as stated in the Facts Stipulation I, page 2: "The transactions of only the Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions are included in the tax base involved in this action."

Therefore, what these other Divisions may have in the way of premises in Washington under this heading occupied by unrelated Divisions and subsidiaries is totally irrelevant and immaterial to it, and we have in other steps, of course, of the trial deleted a reference to unrelated Divisions and I object to Exhibit B on those grounds.

Mr. Riley: Well, Your Honor, the officials of the Plaintiff executed these Interrogatories and which I would classify as self-serving declarations. He says they are unrelated; on the other hand, there is ample evidence in the record to include General Motors Acceptance Corporation and Motors Insurance Corporation are involved in these transactions and that their activities are part of the broad base that the Plaintiff has established in this state to [fol. 367] carry out its business to make the sales of these vehicles to consumer services and so forth, and I think that these facilities are most relevant.

They are not inconsistent with the Facts Stipulation as stated in paragraph I of the part that counsel did not refer to: "Plaintiff has a corporate subsidiary, General Motors Acceptance Corporation, which is engaged in the business of financing the sale of General Motors products, and which, through another corporate subsidiary of its own, Motors Insurance Corporation, insures them against physical damage."

And we refer to United Motors Service Division and reference is made to it in the Exhibit 3 that I cited to Your Honor earlier this morning. I believe that Exhibit B of the Interrogatories should be admitted as part of the answer to the question which was propounded by way of Interrogatories pursuant to Rule 30, and that the answer should in toto be published as the Rules of Pleading, Practice and Procedure, as I understand them, permit.

Mr. Williams: They permitted only subject to the usual objections as to their relevancy and materiality in the particular case before the Court, and these Divisions have paid their taxes on their local activities and we have nothing to tie them in to this situation at all.

The Allison Division, for instance, has never been mentioned or Hertz Driv-ur-self and these others, and they [fol. 368] do not relate to this controversy here and accordingly they are incompetent, irrelevant and immaterial.

Mr. Riley: It is true that some of the matters are there as far as Allison's is concerned, GMC Truck and Coach Division, there is no direct testimony and I am not offering it for that purpose, I am offering it for the purpose of showing the extent of the holdings and places of business by United Motors Service Division and General Motors Acceptance Corporation and Motors Insurance Corporation.

The Court: The objection is sustained.

Mr. Riley: I think then it is a matter of appropriate procedure, then, Your Honor. If I might read Interrogatory No. 2 and the Answer to No. 2 and ask that it be included as part, as though it were testimony in the record, or how would Your Honor like that to be handled?

I would like also to detach from the Interrogatories these two Exhibits and mark them for identification and offer them in evidence in an appropriate manner for the record.

Mr. Williams: I have only this suggestion which I don't thing derogates from what counsel has in mind. I think that with respect to the Exhibits, they don't have to be considered in the light of the questions and the answers, why can't we mark Exhibit A, I mean the one which has been admitted Exhibit A as your next Exhibit 12 and leave it attached, wouldn't that be all right. Exhibit A has been made a part of your offer, I presume, and why not have it [fol. 369] marked Exhibit 12 and leave it attached so that it can be followed chronologically. We will then detach "B" and you can mark it and treat it as Exhibit 13.

Mr. Riley: I don't think it makes any difference.

Mr. Williams: I think that is all right, counsel. I don't mean to interfere with the way you want it, I am sorry, I thought the other would be easier to follow, but if you want

to detach the two exhibits and have them marked separately and offer them that is agreeable with us, Your Honor, subject to your ruling.

The Court: Very well.

Mr. Riley: Well, Your Honor, then for the record, Mr. Canterbury, the Plaintiff's Propounded—how should the record show this, Your Honor?

The Court: I think these would be marked as Defendants' Exhibits No. 12 and 13, and then offer them and counsel will object to No. 13, and the Court will sustain the objection, and that will complete the record.

Mr. Riley: All right. Then may the record show—

The Court: There will be no objection, I take it to No. 12?

Mr. Williams: No, that is right.

The Court: And that will be admitted and the record will be complete.

Mr. Riley: All right. Then, Your Honor, may the record show that in Interrogatory No. 2, which the State now wishes [fol. 370] to publish propounded by the Defendants the inquiries as follows:

DEFENDANTS' INTERROGATORIES AND ANSWERS

(Whereupon, Interrogatories and Answers propounded by the Defendants in their demand dated October 23, 1959, were published by the Court.)

(Reading.)

"Inter. 2. If Employment Security contributions were paid to the Department of Employment Security of the State of Washington during the audit period in question, indicate the average number of employes employed by plaintiff (include all divisions) included in reports to the Department of Employment Security of the State of Washington for each year of the audit period in question.

Answer 2.

Years	Chevrolet Division	GM Parts Division	Oldsmobile Division	Pontiac Division
1949	16	20	3	2
1950	11	28	2	3
1951	17	24	1	3
1952	17	19	2	3
First Half 1953	16	21	6	3"

The balance of the Answer to Interrogatory No. 2, as I previously stated:

"Other divisions and subsidiaries of General Motors Corporation reported additional employes in unrelated activities in the State of Washington during the audit period."

For the record, may I state that there are other divi- [fol. 371] sions which have been referred to which by the Defendants' view were very much related to transactions which were included in the tax base here, and I think that the record supports that notwithstanding this statement by the affiant in answer to these Interrogatories.

Interrogatory No. 4, propounded on the same date and in the same schedule of Interrogatories to the Plaintiff, inquired as follows:

"Inter. 4. Describe the manner in which the present organization, policies and procedures of the plaintiff's unincorporated subsidiaries or divisions (whose activities are included in the assessments involved in this action) differ from the organization, policies and procedures of the plaintiff during the audit periods involved in this action.

Answer 4. Plaintiff knows of no material or significant changes in organization, policies or procedures during the period involved in this action, nor between that period and the present time, except that Chevrolet Division established its zone office in Seattle on January 1, 1954, covering a territory which includes all of the State of Washington except the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum and Walla Walla. During the audit period, no one of the divisions had a zone office or other office in the State of Washington, except that

prior to establishment of the zone office Chevrolet had in Seattle a so-called branch office which covered the same [fol. 372] territory within the State of Washington later covered by the zone office. This office consisted of one Branch Manager and his secretary. Its function was to provide the dealers with a regularly maintained point of contact closer than the Portland zone office for the purpose of expediting deliveries of automobiles during the period of short supply and otherwise assisting the dealers. The Branch Manager had no jurisdiction over nor established contact with any other personnel, and no other personnel reported to, used, or worked from his office."

Interrogatory No. 5 was propounded in the same manner and at the same time to Plaintiff, inquired as follows:

"Inter. 5. State the locations and dates of use, occupancy or tenancy of all offices, warehouses and/or facilities of any other nature which were used or occupied by plaintiff or *any* of its various departments, divisions or other wholly owned subsidiary organizations during the audit periods involved in this proceeding. Describe the nature of the facility and indicate the name of the division or agency of plaintiff which used and/or occupied the same."

The Answer to that Interrogatory is as follows:

"No realty in the State of Washington was occupied by Oldsmobile Division or Pontiac Motor Division. Realty occupied by Chevrolet Motor Division and General Motors [fol. 373] Parts Division is tabulated on Exhibit A."

Mr. Riley: At this point, may I have the original?

Mr. Williams: I gave it to the Judge.

Mr. Riley: May we then have the original Exhibit A identified for admission?

Mr. Williams: No objection to A.

(Whereupon, realty occupied by Chevrolet Motor Division and General Motors Parts Division was marked for identification as Defendants' Exhibit No. 12.)

Mr. Riley: I offer it, Your Honor.

The Court: It will be admitted as No. 12; Defendants' Exhibit No. 12, may be admitted.

(Whereupon, the document marked Defendants' Exhibit No. 12 was received in evidence.)

Mr. Riley: Reading the balance of the Answer to Interrogatory No. 5:

"Realty occupied by unrelated divisions and subsidiaries is tabulated on Exhibit B."

Mr. Williams: I move that last sentence be stricken from the Answer, the same reasons that we gave, that the Exhibit is not proper—

(Whereupon, document indicating realty occupied by unrelated divisions and subsidiaries was marked for identification as Defendants' Exhibit No. 13.)

[fol. 374] Mr. Riley: I offer for the record Defendants' Exhibit No. 13 which speaks for itself and which is offered for the purpose of showing the real estate occupied by other divisions of General Motors in the State of Washington during the audit periods in question and which supports other portions of the record indicating activities of United Motors Service Division, General Motors Acceptance Corporation and Motors Insurance Corporation which are related to and were part of the activities of Plaintiff's in accomplishing transactions included in the tax base of this case.

Mr. Williams: Exhibit B has been excluded, Your Honor.

Mr. Riley: For the record, that is Defendants' Exhibit 13, counsel.

Mr. Williams: Yes, Exhibit 13 as now designated, I move to strike the last sentence of the Answer.

The Court: It may be stricken and your objection as shown to 13 is sustained.

BOTH SIDES REST

Mr. Riley: Counsel, do you have anything else?

Mr. Williams: No.

Mr. Riley: The state rests, Your Honor. Does Plaintiff rest?

(Counsel indicated they rested.)

(End of Proceedings.)

Memorandum Opinion

[fol. 375] Memorandum Opinion, Wright, J. is omitted from the record here as it appears on page 21 supra.

[fol. 377] **Judge's Certificate**

State of Washington,
County of Thurston, ss.:

I, Charles T. Wright, one of the Judges of the Superior Court of the State of Washington, in and for the County of Thurston, and the Judge before whom the foregoing entitled case was heard and determined, do hereby certify that the matters and proceedings embodied in the foregoing Statement of Facts are matters and proceedings occurring in the trial of said Cause, and that the same are hereby made a part of the record therein.

I further certify that said Statement of Facts, together with all exhibits and other written evidence on file in said Cause and attached to said Statement of Facts, contains all the material facts, matters and proceedings heretofore occurring in said Cause, and not already a part of the record therein; that the said Statement of Facts, and exhibits attached thereto, are hereby made a part of the record in said Cause, the Clerk of this Court being hereby instructed to attach all exhibits thereto.

Counsel for the respective parties concurring herein, I have this day signed this Statement of Facts.

In Witness Whereof, I have hereunto set my hand this 27 day of June, A.D., 1961.

Charles T. Wright, Judge.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 115

GENERAL MOTORS CORPORATION, APPELLANT,

vs.

WASHINGTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MAY 3, 1943

PROBABLE JURISDICTION NOTED JUNE 17, 1943

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, APPELLANT,

vs.

WASHINGTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

VOLUME II

	Original	Print
Record from the Superior Court of the State of Washington in and for Thurston County		
Plaintiff's Exhibit No. 1—Certain Pontiac job classifications	378	245
Plaintiff's Exhibit No. 2—Direct dealer selling agreement, Pontiac Motor Division	380a	249
Plaintiff's Exhibit No. 3—Portions of Pontiac office manual setting forth zone office procedures (excerpts)	403	273
Business management	404	273
Dealer selling agreements	409	278
Service and service promotion	429	304
Plaintiff's Exhibit No. 4—Certain Chevrolet job classifications	443	322

RECORD PRESS, PRINTERS, NEW YORK, N. Y., OCTOBER 31, 1963

	Original	Print
Record from the Superior Court of the State of Washington in and for Thurston County—Continued		
Plaintiff's Exhibit No. 5—Portions of Chevrolet office manual setting forth zone office procedures (excerpts)	446	325
Dealer financial statements	446	325
Dealer capital standard program	449	329
Accumulation of awards or prizes	454	337
Car distribution standard practice	457	340
Defendant's Exhibit No. 8—Direct dealer selling agreement, Chevrolet Motor Division	459a	343
Defendant's Exhibit No. 10—Manual of service department policies and procedures effective June 1, 1950, Chevrolet Motor Division	482	367
Defendant's Exhibit No. 11—Letter from General Motors Corporation to State of Washington Tax Commission, dated June 30, 1958	507	392
Exhibits 3 and 4—Information re field representatives in State of Washington, for Oldsmobile and Pontiac divisions, 1953-1957	518	405
Exhibit 5—Dealer monthly projection report prepared by Pontiac dealers	520	407
Exhibit 6—Dealer's ten-day report on new cars submitted by Pontiac dealers	521	408
Exhibit 7—Monthly financial statement submitted by Pontiac dealers	525	412
Exhibit 8—Application for a Pontiac dealer selling agreement	529	416
Exhibit 9—Pamphlet entitled "Dealer Investment Plan"	533	420
Defendant's Exhibit No. 12—Realty occupied by Chevrolet Motor Division and General Motors Parts Division in the State of Washington, 1949, 1950, 1951, 1952 and first half 1953	550	437
Defendant's Exhibit No. 13—Realty occupied by unrelated divisions and subsidiaries in the State of Washington, 1949, 1950, 1951, 1952 and first half 1953	551	438

	Original	Print
Proceedings in the Supreme Court of the State of Washington	552	439
Opinion, Finley, Ch. J.	552	439
Remittitur	570	455
Notice of appeal to the Supreme Court of the United States	571	456
Clerk's certificate (omitted in printing)	576	458
Order noting probable jurisdiction	577	459

[fol. 378]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

PLAINTIFF'S EXHIBIT NO. 1

CERTAIN JOB CLASSIFICATION DESCRIPTIONS AS CONTAINED IN THE JOB CLASSIFICATION MANUAL APPLICABLE TO THE PONTIAC DIVISION

7-S-30 BUSINESS MANAGEMENT MANAGER (ZONE)

His responsibility is to assist dealers in developing more efficient management in all departments of their business. His duties include analyzing dealer operating results from the standpoint of the various operating and profit factors and capital relationships, and assisting dealers to interpret these analyses and formulate plans and institute controls so that a satisfactory return on their investment will result.

7-S-1 PARTS AND SERVICE MANAGER

His responsibility is for the effectiveness of the service function in the zone area. His duties include the hiring, training, and supervision of zone service representatives; the education of dealers' service organizations in approved methods through schools and other contacts; promotion of Divisional policies as to methods of obtaining customer business and service; co-operating with the dealer in the handling of difficult customer complaints which the dealer has been unable to satisfy. The qualifications of this man are a thorough mechanical training, ability to supervise men, and personality to meet and talk with the public.

7-S-44 OFFICE MANAGER AND PRODUCT DISTRIBUTOR (ZONE)

Combines duties of 7-S-42 and 7-S-43.

7-S-42 PRODUCT DISTRIBUTOR (ZONE)

His responsibility is to maintain the most effective distribution on orders from dealers for the product in relation to production.

7-S-43 OFFICE MANAGER (ZONE)

His responsibility is for the effectiveness of the office personnel in the Zone. His duties include the hiring and supervision of office personnel, supervision of clerical records, such as warehouse [fol. 379] stock of products and parts, incoming and outgoing merchandise shipments, cashier's activities, necessary accounting records and statements prescribed by the Home Office, and credits and collections.

6-S-71 DISTRICT MANAGER

His responsibility is to maintain the required dealer organization in the territory assigned to him and to promote the business of the Division in this territory. In carrying out this responsibility, he is to contact assigned dealers or Branches in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the Divisional sales policies and promotional and training plans to improve the selling ability of the sales organization. His duties include contacting assigned dealers or Branches at designated intervals and securing orders for the Division's products; assisting the outlet's Sales Manager in organizing and training its sale force; assisting in controlling the used product inventory; and advising outlets of changes in Divisional policies. Passes on to dealers any knowledge gained of competitive products and is responsible for closing open points.

6-S-72 SERVICE AND/OR PARTS REPRESENTATIVE

Participates in the duties and responsibilities of Service, Parts and Service, or Service and Mechanical Manager (Zone or Branch) 7-S-1), and works under his supervision. His duties include the education of dealers' and/or distributors' parts and service personnel in approved methods through schools and other contacts; promotion of Divisional policies as to methods of obtaining customer business and service; and co-operating with the dealer and/or distributor in the handling of difficult customer complaints which the dealer and/or distributor has been unable to satisfy. The qualifications of this man are a thorough product and/or mechanical training and also personality to meet and talk with the public.

DIRECT DEALER SELLING AGREEMENT

PONTIAC MOTOR DIVISION

GENERAL MOTORS CORPORATION

ZONE

402

Form No. 450—Pontiac-49-Z
PRINTED IN U.S.A. 15M 7-49

PONTIAC MOTOR DIVISION

GENERAL MOTORS CORPORATION

Direct Dealer

Selling Agreement

THIS AGREEMENT, made this _____ day of _____, A. D. 19____, by and between Pontiac Motor Division—General Motors Corporation, hereinafter called Seller, and

_____

an individual
or co-partnership of _____ City _____ County _____ State
a corporation

hereinafter called Dealer,

WITNESSETH:

GENERAL MOTORS CORPORATION

Direct Dealer

Selling Agreement

THIS AGREEMENT, made this _____ day of _____, A. D. 19____, by and between Pontiac Motor Division—General Motors Corporation, hereinafter called Seller, and

[fol. 380]

_____

an {individual / co-partnership of / corporation} _____ City _____ County _____ State

hereinafter called Dealer,

WITNESSETH:

IN CONSIDERATION of the promises hereinafter made by the parties to each other, it is agreed as follows:

FIRST: Seller will sell and Dealer will buy Pontiac motor vehicles and chassis, subject to the terms and conditions hereof, and Dealer shall properly develop the sale of Pontiac motor vehicles and chassis in the following territory:

250

380

SECOND: The terms and conditions set forth in the attached "Terms and Conditions — Direct Dealer", bearing Form No. 451 Pontiac-49-Z and Identification No. 49- _____, are hereby made a part hereof with the same force and effect as if set forth at length herein.

THIRD: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of _____ _____ _____

[fol. 380a]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

PLAINTIFF'S EXHIBIT NO. 2

(See opposite) ☞

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

Dealer

Firm Name

By _____
Officer of Firm and Title

By _____
Officer of Firm and Title

Town and State _____

PONTIAC MOTOR DIVISION
General Motors Corporation

By _____
Zone Manager

Witness: _____

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.)

If Dealer is a corporation, show State in which incorporated: _____

_____
(Name of Dealer's Bank) (City) (State)

INDEX

	Page
Accessories	8
Accounts and Records	10
Uniform Accounting System	10
Examination of Accounts and Records	10
Advertising Fund	13
Dealer Portion of Fund	13
Factory Portion of Fund	14
Agent or Legal Representative of Seller, Dealer Not Made	20
Agreement of Parties, Sole	20
Building Service for Dealers	9
Capital Requirements	10
Claims of Loss on Dealer's Premises	17
Terminations to Which Applicable	17
Dealer's Premises to Which Applicable	17
Leased Premises	18
Payments	18
Limitations	18
Owned Premises	19
Premises Partially Owned and Partially Leased	19
Exceptions	19
Time for Filing Claims	19
Commitments, Responsibility for Dealer's	20
Complaints, Customer	10
Design, Change of	7
Law, Applicable	20
Model Change	6
Model Change at Reduced List Price	7
Name and Trade-Marks, Pontiac	13
Seller's Exclusive Rights	13
Discontinuance of Use Upon Termination	13
Dealer's Liability for Failure to Discontinue Use	13
Notices	20
Orders, Handling of Dealer's	3
Three Months' Estimate of Requirements	3
Ten Day Report	3
Orders	3
Failure to Fill Orders	4
Owner, Care of	11
Conditioning of New Motor Vehicles	11
Owner's Service Policy	11
Stock of Parts	11
Representation as to Parts	11
Special Tools	12
Mechanical Staff	12
Flat Rate System	12
Warranty Adjustment	12
Customer Relationship	12
Inspection of Facilities	12
Parts and Accessories	8
Selling Rights	8
Prices	8
Billing and Payment	8
Return of Defective Parts and Accessories	8
Return of Inactive Parts	9
Right to Return Parts and Accessories Within Thirty Days	9
Payment by Dealer	4
Place of Business Satisfactory to Seller, Dealer's	9
Pricing, Change in	5
Seller's Rights	5
Price Increases	5
Price Reductions	5
New or Different Body Types	6
Records, Sales and Service	10
Repurchase When Agreement is Terminated, Seller's Right to	16
Sale of Motor Vehicles, Satisfactory	10
Sales Staff	10
Selling Privilege, Dealer's	3
Services, Dealer's Personal	9
Shipments, Car	4
Mode of Shipment	4
Prepayment of Transportation Charges	4
Assignment of Reparation	4
Liability for Demurrage	5
Diversion	5
Claims	5
Additional Charges	5
Signs	12
Suggested Price to Retail Purchaser	11
Maximum Price	11
Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories	11
Representation as to Transportation Charges	11
Termination	14
Termination by Dealer	14
Termination for Cause	14
Transactions After Termination	15
Dealer's Obligations	15
Dealer's Orders	15
Effect of Transactions After Termination	16
Waivers, No Implied	20
Warranty	7

[fol. 383]

253

383

[fol. 384]

Attach Signatural Attachment to This Page.

Form No. 451—Pontiac—49Z.
PRINTED IN U.S.A. 6880 7-48

Identification No. 49 - 6481

PONTIAC MOTOR DIVISION

GENERAL MOTORS CORPORATION

Terms and Conditions

Direct Dealer

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. Dealer's Selling Privilege

While this Agreement shall be and remain in effect, Dealer shall have the non-exclusive privilege of selling new Pontiac motor vehicles and chassis and the privilege of using the word "Pontiac" and the Pontiac trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Pontiac motor vehicles and chassis, parts and accessories.

2. Handling of Dealer's Orders

A. Three Months' Estimate of Requirements

Dealer will, unless otherwise advised by Seller, furnish Seller for its general guidance every month, on the date specified by Seller, but not later than the sixth day of each month, an estimate, on forms provided by Seller, of his requirements of new Pontiac motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately.

B. Ten Day Report

In order to permit Seller to keep its purchases of raw materials and the production and distribution of Pontiac motor vehicles and chassis in line with retail sales, Dealer will furnish Seller, every ten (10) days, with a report known as the "Ten-Day Report" on standard forms supplied by Seller. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

C. Orders

Dealer's orders for Pontiac motor vehicles and chassis shall be submitted upon order forms supplied by Seller, at intervals mutually satisfactory. If, however, in any month Seller does not ship the standard products which were scheduled for delivery during that month, the orders for such undelivered standard products will remain in effect unless cancelled in whole or in part by either Seller or Dealer upon

[fol. 385]

385

written notice served by the one upon the other. However, orders for special motor vehicles and chassis may be cancelled only by Seller.

Any motor vehicle or chassis which differs in any way from the standard specifications therefor as adopted by Seller or special equipment of any type shall be considered "special".

D. Failure to Fill Orders

Seller shall not be liable for failure or delay in filling orders of Dealer where such failure or delay is due, in whole or in part, to any cause beyond Seller's control or to any material, labor or utility shortage or curtailment or to any labor trouble in the plants of Seller or its suppliers or where delivery is prohibited, prevented or delayed by reason of any governmental or judicial action or proceeding, whether or not arising out of Seller's fault, and Dealer hereby releases and discharges Seller from any and all liability for any and all damages and losses arising from the failure of Seller to fill any orders placed hereunder.

3. Payment by Dealer

Dealer shall pay Seller for each shipment of new Pontiac motor vehicles and chassis, Dealer's price from Seller in effect at the time of such shipment, together with a Factory Handling Charge determined by Seller which shall include reimbursement to Seller for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. Car Shipments

A. Mode of Shipment

Seller has the right to ship all motor vehicles and chassis purchased by Dealer hereunder by whatever mode of transportation and from whatever point it may select. However, Seller will endeavor, whenever practicable, to follow Dealer's requests with regard to routing.

B. Prepayment of Transportation Charges

Seller will prepay all transportation charges on shipments of motor vehicles and chassis made to Dealer hereunder, and Dealer will pay Seller, in addition to the prices otherwise provided for herein, transportation charges to be determined and set by Seller based on the published all-rail freight charges from Pontiac, Michigan, to Dealer's established railroad delivery point in effect on the date such shipments are delivered to carrier for transportation. In lieu of the foregoing transportation charges, Seller may establish and Dealer will pay Seller average transportation charges either on national, regional, zone or single market basis. In addition, if deliveries are made at Dealer's place of business, Seller will establish and Dealer will pay reasonable charges for such deliveries.

C. Assignment of Reparation

Dealer agrees to and hereby does assign, set over, and transfer to Seller his right, if any, to any refund, reparation, or damages from any carrier arising out of or in connection with payment of any unlawful charges for transportation of said motor vehicles or chassis, whether said payment was made by Dealer or Seller, and Dealer hereby releases Seller from any liability to him on account of any reduction in the transportation charges billed hereunder resulting from any subsequent change in rate or rates, or in the mode of transportation.

[fol. 386]

D. Liability for Demurrage

Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other charges accruing after arrival of such shipment at destination.

E. Diversion

If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal, for any reason, to accept motor vehicles or chassis that may be shipped Dealer hereunder on Dealer's orders, Dealer will assume responsibility for and pay the additional charges and expenses, incident to such diversion.

F. Claims

All claims for loss of or damage to shipments of motor vehicles and chassis shipped hereunder while in the possession of the transportation agency shall be submitted to Seller by Dealer within ten (10) days after date of delivery of shipment to Dealer.

G. Additional Charges

If Dealer orders one or more motor vehicles or chassis boxed or crated or the shipping regulations make boxing or crating necessary, or if Seller finds it expedient in order to facilitate shipment to double deck one or more motor vehicles or chassis to a carload, or to dismantle same in order to load for economy, or if it is necessary to load on an open freight car and the use of a tarpaulin or cover is needed, a charge covering extra cost of such items shall be made by Seller and paid by Dealer. Such charge will be added to the invoice covering shipment.

5. Change in Pricing

A. Seller's Rights

Seller has the right at any time to change prices, discounts, terms and provisions affecting any of its current models or body types of motor vehicles or chassis, and to issue new Price Lists with respect thereto.

If Seller changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Seller at the time that the same are made effective by Seller.

B. Price Increases

Seller shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any motor vehicle or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel orders or parts thereof for motor vehicles or chassis to which such change applies, provided written notice of election to cancel is delivered to Seller within ten (10) days after receipt by Dealer of Seller's notice. Failure to so elect within the time specified will constitute a confirmation of all unshipped orders for delivery in accordance with said change.

C. Price Reductions

If Seller reduces the list price on any of its current models or body types of vehicles or chassis, Seller will refund or credit an allowance to Dealer on all new and unused motor vehicles and chassis of current model and body type purchased from Seller and paid for by Dealer during the twelve (12) months immediately preceding the date of such reduction and carried in Dealer's stock as new and unsold at the time such reduction is made, an amount equal to the difference between the price Dealer shall have paid for any such motor vehicles or chassis and the reduced amount then payable for the same; provided, however, that the above-mentioned refund will not be

[fol. 387]

made upon any motor vehicle or chassis used by Dealer for demonstration purposes, nor will any such refund be granted unless claim therefor be made by Dealer in writing within thirty (30) days from the date that such reduction becomes effective. All such claims must be supported by evidence including affidavits satisfactory to Seller to the effect that Dealer is entitled to such claimed refund. In the case of motor vehicles or chassis purchased by Dealer under a title retaining instrument Seller reserves the right to pay such difference in price to the holder of such instrument.

D. New or Different Body Types

In the event that Seller produces or manufactures at any time, a model or body type of motor vehicle or chassis new or different in any respect from motor vehicles or chassis previously or currently being manufactured, Dealer shall not thereby have a claim for any refund upon any motor vehicle or chassis previously purchased by him hereunder, whether or not the price or value of motor vehicles or chassis previously manufactured by Seller is affected thereby, unless otherwise provided herein.

6. *Model Change*

In the event that Seller shall, at any time, discontinue current models and body types of Pontiac motor vehicles or chassis, and substitute in place thereof new models and body types, Seller will make an allowance to Dealer on such new unused motor vehicles and chassis of such discontinued models or body types purchased and paid for by Dealer prior to such model change and still in Dealer's stock unsold on the date hereinafter specified, as shall be in excess of three per cent (3%) of the quantity of Pontiac motor vehicles and chassis of such discontinued models and body types purchased by Dealer prior to such change.

The amount of such allowance and the time of payment thereof shall be determined by Seller. Such allowance, however, shall in no case be less than four per cent (4%) of the average list price of all series of Pontiac motor vehicles and chassis of such models and body types about to be discontinued based on the national averages according to the records of Seller.

The date on which Dealer's stock of discontinued models shall be determined shall be the day on which the new models and body types are officially announced to the general public (local preview announcements excepted).

Where fractions of a motor vehicle are involved, Dealer will receive a proportionate amount of the allowance on such fraction.

The above-mentioned allowance will not be made on any motor vehicles or chassis used by Dealer for demonstration purposes, nor will any such refund or allowance be granted unless claim therefor is made within thirty (30) days from date such new models or body designs are announced.

All such claims must be supported by evidence including affidavits satisfactory to Seller to the effect that Dealer is entitled to said allowance.

Seller may elect to make the aforesaid allowance prior to the announcement of new models for the next succeeding selling year and in that event the allowance will be made on such new unused Pontiac motor vehicles and chassis of those models and body types about to be discontinued, purchased and paid for by Dealer prior to the date so designated by Seller and still in Dealer's stock unsold on said date, as shall be in excess of three per cent (3%) of the quantity

[fol. 388]

389

of Pontiac motor vehicles and chassis of those models and body types purchased by Dealer prior to such designated date.

If Seller elects to make the aforesaid allowances prior to an announcement of new models, Seller will make the same allowances with respect to purchases by Dealer from Seller of corresponding Pontiac motor vehicles and chassis of those models and body types about to be discontinued for the balance of the current selling year.

In the event that at the time current models and body types of Pontiac motor vehicles and chassis are discontinued and new models and body types substituted in place thereof, Dealer has or could have retail orders for current models and body types in excess of the number of such vehicles then on hand, or in the event that there are other circumstances which, in Seller's opinion, would not warrant the allowance herein provided for, which is intended to afford Dealer some relief with respect to sales of discontinued models and body types below Dealer's normal prices, Dealer, upon request of Seller, will execute a waiver of the provisions of this Paragraph 6.

7. Model Change at Reduced List Price

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Seller will refund or credit to Dealer a proportionate amount on the price paid by Dealer for those new unused motor vehicles and chassis of the discontinued series which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refunds will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different line of motor vehicles. In the latter event Seller will make such refunds or allowances as shall, in its opinion, seem equitable under the circumstances.

If Dealer is entitled to the allowance specified in Paragraph 6 hereof, on any motor vehicle or chassis of such discontinued series still in Dealer's stock unsold at the time such new models or body types are announced, Dealer shall be entitled to receive such allowance in addition to the refund due hereunder.

8. Change of Design

Seller has the right to change the design of any new Pontiac motor vehicle, chassis, accessories or parts thereof at any time, without notice to Dealer. If Seller shall make a change in design, there shall be no obligation upon Seller to make such change upon any Pontiac motor vehicles, chassis, accessories, parts or other products manufactured or sold or being manufactured or sold in accordance with orders of Dealer; nor shall Seller be obligated to make a similar or corresponding change or substitution on any Pontiac motor vehicle, chassis, accessory or other part or product previously purchased by or shipped to Dealer.

[fol. 389]

9. Warranty

There are no warranties, expressed or implied, made by Seller on the Pontiac motor vehicles, chassis or parts furnished hereunder, except as follows:

"The Manufacturer warrants each new motor vehicle, including all equipment or accessories (except tires) supplied by the Manufacturer, chassis or part manufactured

259

389

by it to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Pontiac Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident."

10. Parts and Accessories

A. Selling Rights

Seller hereby grants to Dealer the non-exclusive right to sell new genuine Pontiac parts and accessories and Seller will sell Dealer direct or through a designated parts warehouse, such new genuine Pontiac repair parts and accessories.

"Genuine Pontiac parts" as used in this Agreement are defined as being parts manufactured by or for Seller, designed for use on Pontiac motor vehicles or chassis, and distributed by Seller or any division or subsidiary of General Motors Corporation.

B. Prices

Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions specified in the current Dealer Price List issued by Seller or according to such different prices, terms and provisions as may hereafter from time to time be established by Seller.

C. Billing and Payment

Parts and accessories ordered by Dealer as aforesaid, will be invoiced to Dealer by Seller, and settlement therefor made by Dealer with Seller except in the case of dealers having current Selling Agreements covering two or more of the following makes of motor vehicles: Chevrolet, Pontiac and Oldsmobile. In the latter event the divisions of General Motors Corporation with which Dealer has such Selling Agreements will agree among themselves on which one of them will carry such Dealer's account, and thereupon all parts and accessories ordered by such Dealer will be invoiced for the account of such division and Dealer will make settlement of such invoices with the division for whose account same are rendered.

Parts and accessories ordered by Dealer hereunder will be billed net cash payable the tenth of the month following date of billing, collection charges, if any, to be paid by Dealer.

D. Return of Defective Parts and Accessories

After receiving specific authorization from Seller, Dealer may return defective Pontiac parts and accessories to Seller for credit, at Dealer's net prices in effect at date such parts and accessories

[fol. 390]

260

31

are received by Seller, such parts and accessories to be shipped, transportation charges prepaid, to the destination specified by Seller. Dealer will be reimbursed for transportation charges prepaid by him on authorized shipments of defective parts and accessories made hereunder.

E. Return of Inactive Parts

In the event Dealer develops an inactive stock of genuine Pontiac parts, or for any other reason desires to liquidate a portion of his parts stock, Dealer may submit to Seller a list of those parts, in good condition and unused, which he desires to return for credit. Seller shall, as promptly as possible, notify Dealer as to the parts, if any, on said list which Seller will accept and the price at which same will be accepted. Thereupon Dealer may ship to the destination specified by Seller, transportation charges prepaid, the parts which Seller has agreed to accept.

F. Right to Return Parts and Accessories Within Thirty Days

Dealer may return any new Pontiac parts and accessories purchased hereunder, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer, such parts and accessories to be shipped to the destination specified by Seller, transportation charges prepaid. Credit on new Pontiac parts and accessories will be at Dealer's net prices. With respect to accessories, Dealer shall be entitled to return same whether same were purchased separately or shipped on or with a new Pontiac motor vehicle. Under the same conditions, Dealer may return anti-freeze, polishes, chemicals and other similar items purchased hereunder for credit at Dealer's net prices.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Seller upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. Dealer's Personal Services

Each person named in Paragraph Third of this Agreement shall devote his full time, attention, and energy to the conduct of Dealer's business hereunder.

12. Dealer's Place of Business Satisfactory to Seller

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

13. Building Service for Dealers

Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as

[fol. 391]

261

391

a complete working plan and will be furnished solely as a suggestion.

14. Capital Requirements

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set standards for dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

15. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them and which will enable Seller to prepare composite dealer profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

B. Examination of Accounts and Records

In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

16. Satisfactory Sale of Motor Vehicles

Dealer shall properly develop to Seller's satisfaction the sale of Pontiac motor vehicles and chassis in the territory described in Paragraph First.

17. Sales Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the territory described in Paragraph First.

18. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Pontiac motor vehicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

19. Customer Complaints

Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to protecting the

[fol. 392]

262

392

goodwill of Seller and Dealer in the sale of Pontiac products.

20. Suggested Price to Retail Purchaser

A. Maximum Price

Seller will prepare Advertised Delivered Prices on new Pontiac motor vehicles and chassis at Pontiac, Michigan, and it is the desire of Seller that all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser, all as shown in the current sheet of Suggested Maximum Retail Delivered Prices issued to Dealer by Seller from time to time, plus applicable taxes, if any.

Dealer will advertise his delivered prices in his town and will inform retail purchasers of such prices, and will give them itemized invoices covering the details of their purchases.

B. Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Pontiac motor vehicles without being required to purchase any optional equipment or accessories and Dealer therefore will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Pontiac motor vehicle without such optional equipment or accessories.

C. Representation As to Transportation Charges

Dealer shall not make any statement intended to lead any purchaser to believe that a greater portion of the selling price of a new Pontiac motor vehicle or chassis represents transportation charges and Factory Handling Charges than the amounts of such items actually charged to and paid for by Dealer.

21. Care of Owner

Recognizing the importance of owner goodwill, Dealer will furnish prompt and satisfactory service at reasonable cost to Pontiac owners. In furtherance thereof Dealer will:

1. Conditioning of New Motor Vehicles

Condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

B. Owner's Service Policy

Execute and deliver to each person who purchases a new Pontiac motor vehicle or chassis from Dealer, an "Owner's Service Policy", on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy and expressly authorizes Seller to charge his account with coupons covering inspections on new Pontiac motor vehicles sold by Dealer and performed by other Pontiac dealers under such "Owner's Service Policy".

C. Stock of Parts

Carry in stock at all times during the life of this Agreement an adequate number and assortment of parts and accessories to render proper service to owners of Pontiac motor vehicles and chassis in Dealer's zone of influence.

D. Representation as to Parts

Not sell, offer for sale, or use in the repair

[fol. 393]

393

of Pontiac motor vehicles and chassis as genuine new Pontiac repair parts, any part or parts which are not in fact genuine new Pontiac repair parts as defined in sub-paragraph A of Paragraph 10 hereof.

E. Special Tools

Buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which shall not exceed One Hundred Dollars ($100.00), as Seller deems essential to service such new models properly. Dealer will pay for such new-model tools promptly on receipt thereof.

F. Mechanical Staff

Employ a sufficient number of competent mechanics to meet adequately the service requirements of the Pontiac owners in Dealer's zone of influence.

G. Flat Rate System

Install the Pontiac Flat Rate System of time allotments for service work as recommended and furnished by Seller and charge Seller for policy, warranty, and any other work performed by Dealer for Seller's account on the basis of such time allotments and at one-half (½) of the labor rates related thereto, as agreed upon with Seller.

H. Warranty Adjustment

Install any part or parts furnished by Seller under the warranty set forth in Paragraph 9 hereof on motor vehicles sold by Dealer without expense to the owner of such vehicles and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit to Dealer one-half (½) of the flat rate charge for installing the new part or parts according to the Flat Rate System of time allotments and labor charges then in effect in Dealer's business as provided in sub-paragraph G above.

I. Customer Relationship

Make every reasonable effort to satisfy owners of Pontiac motor vehicles and chassis in the territory described in Paragraph First hereof, and to satisfy all persons purchasing Pontiac motor vehicles and chassis from Dealer, and in pursuance thereof establish regular contact either by correspondence or personal interview with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied, shall be promptly reported to Seller with the name of the owner making same.

J. Inspection of Facilities

Permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

22. Signs

Dealer will purchase, erect, and maintain at his expense the following signs as hereinafter specified:

A. A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

[fol. 394]

264

394

C. Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

23. *Pontiac Name and Trade-Marks*

A. Seller's Exclusive Rights

Seller is entitled to the use of the word "Pontiac", and the Pontiac trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories, and of the goodwill attached thereto.

B. Discontinuance of Use Upon Termination

If the word "Pontiac" is used in the name under which Dealer's business is conducted or the word "Pontiac" or any Pontiac trade-mark, including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Seller, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connection with any motor vehicle business, any Pontiac trade-mark, including the distinctive outline or form thereof, the word "Pontiac" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty or to deceive the public. If Dealer is a corporation in whose corporate name the word "Pontiac" is used, Dealer will promptly have the corporate name changed, eliminating said word "Pontiac" therefrom.

C. Dealer's Liability for Failure to Discontinue Use

If Dealer, after termination of this Agreement, shall refuse or neglect to keep and perform the provisions of sub-paragraph B hereof, Dealer shall reimburse Seller for all costs, attorneys' fees and other expenses incurred by Seller in connection with legal action to require Dealer to comply therewith.

24. *Advertising Fund*

In order to give to Pontiac dealers the advantages of a comprehensive and coordinated dealer advertising program, an Advertising Fund, composed of a dealer portion and a factory portion, has been established and is administered by Seller for the purpose of supporting such a program.

A. Dealer Portion of Fund

Seller will collect the sum of Fifteen Dollars ($15.00) for each new Pontiac motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the dealer portion of the Advertising Fund for the account of Dealer.

The amounts contributed by Dealer shall be used solely in paying the cost of local advertising, including preparation expense, in Dealer's territory, through such local advertising media as, in the judgment of Seller, will benefit Dealer. If a dealer desires to participate in local advertising in a community outside his zone of influence, he may do so provided that he shall have secured the consent in writing of the dealer or dealers in whose zone of influence such community is located, and shall have reached an agreement in writing as to the amount per car which is to be taken out of his contributions to the Advertising Fund and applied to such advertising. A copy of said consent and agreement shall be furnished to Seller.

All local advertising to be paid for out of the dealer portion of the Advertising Fund shall carry the name and address of Dealer except that if, in the judgment of Seller, that is impractical, a suitable group reference will be used.

[fol. 395]

Contributions to said Fund shall be accounted for separately. However, contributions to the Fund shall be credited to the Fund for the joint account of all dealers involved where two or more Pontiac dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city, and in the judgment of Seller advertising in said large city substantially covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of Seller, may be considered as a common area for purposes of local advertising; contributions by all other dealers shall be credited to the Fund for the separate account of each dealer involved.

With respect to contributions of dealers located in cities, towns, or communities as aforesaid, which are credited to the Fund for the joint account of the dealers involved, the unspent portion, if any, of any such dealer's contribution, upon termination of this Agreement, shall remain in said joint account and shall be used in the payment of the cost of local advertising and not refunded to Dealer. With respect to contributions of all other dealers which are credited to the Fund for the separate account of each such dealer, the unspent portion, if any, of any such dealer's contribution, upon termination of such dealer's Selling Agreement, shall be refunded to such dealer.

As soon as practicable after the close of each calendar year during the term of this Agreement, or in the event of termination of this Agreement, as soon as practicable after the effective date of termination, Dealer shall be furnished with a statement of his account in dealer portion of said Fund or of the joint account to which he has contributed. Such statement shall show the total advertising expenditures by media classification charged against said account, the total collections and the resulting balance, and in the case of a joint account, the amount of the individual contribution of Dealer.

B. Factory Portion of Fund

Seller will pay into the Advertising Fund the sum of Four Dollars and Fifty Cents ($4.50) for each new Pontiac motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the factory portion of the Advertising Fund.

The factory portion of the Fund may be used by Seller for advertising of such type in such media and at such time and place as, in the opinion of Seller, will most effectively serve the dealer needs or interests as determined by Seller.

[fol. 396]

TERMINATION OF AGREEMENT

25. Termination

A. Termination by Dealer

Dealer may terminate this Agreement by written notice of termination delivered to Seller, such termination to be effective one (1) month after receipt by Seller of such notice.

B. Termination for Cause

(1) If Seller or Dealer requires a license for the performance of any obligation hereunder or in connection herewith in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties hereto shall fail to secure or maintain a license or renewal thereof, or if such license shall be suspended or revoked, either party may immediately terminate this Agree-

266

396

ment and all orders theretofore given to Seller and not delivered, by giving to the other party written notice of such termination.

(2) If Dealer does not develop the sale of Pontiac motor vehicles and chassis to the satisfaction of Seller or does not conduct his business in accordance with any requirement set forth in Paragraphs 11 and 12, Paragraphs 14 to 19, inclusive, or Paragraph 21 hereof, to the satisfaction of Seller, Seller may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt thereof.

(3) Seller may terminate this Agreement immediately by delivering to Dealer or his representative written notice of such termination in the event of the happening of any of the following:

a. Death, incapacity, or the removal, resignation, withdrawal, or elimination from the dealership for any reason of Dealer or any person named in Paragraph Third of this Agreement.

b. Any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any substantial interest in the direct or indirect ownership or management of the Dealer or dealership.

c. Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

d. Insolvency of Dealer; the filing of a voluntary petition in bankruptcy by Dealer; the filing of a petition to have Dealer declared bankrupt, provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; the execution by Dealer of an assignment for the benefit of creditors; the conviction of Dealer or any principal officer, or manager of Dealer of any crime which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

(4) Seller or Dealer may terminate this Agreement immediately by delivering to the other party written notice of termination in the event that the other party violates or fails to comply with any term or provision of this Agreement for which termination is not otherwise specifically provided for in this Paragraph 25.

26. Transactions After Termination

A. Dealer's Obligations

Any termination of this Agreement shall not release Dealer from the obligation to pay any sum which may then be owing Seller, or from the obligation to pay for any special motor vehicle, chassis or equipment for same as defined in sub-paragraph C of Paragraph 2 hereof which may have been ordered by Dealer and not shipped by Seller prior to such termination.

B. Dealer's Orders

In the event of termination of this Agreement pursuant to the provisions of Paragraph 25A, 25B(2) or Paragraph 25B(3), sub-section a,

[Fol. 397]

b or c thereof, but not otherwise, Seller will use its best efforts to furnish Dealer with Pontiac motor vehicles and chassis to fill his bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles and chassis delivered to Dealer by Seller during the three (3) months immediately preceding the date of termination, subject, however, to the following further conditions and limitations:

(1) Within ten (10) days following termination, Dealer shall deliver to Seller a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Seller to make delivery up to the three (3) months' total number of motor vehicles required to be delivered by Seller as above described. Those orders for which delivery is thus specified by Dealer, when approved by Seller, shall constitute Dealer's Schedule of Termination Deliveries. No change or substitution may be made by Dealer in such Schedule of Termination Deliveries and Seller shall not be obligated to make deliveries of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Seller the detailed Schedule above required, Dealer shall have no further rights hereunder.

(2) Dealer shall accept any motor vehicle required to be delivered by Seller hereunder against Dealer's Schedule of Termination Deliveries immediately upon notification by Seller of the availability to Dealer of such vehicle. In the event of his failure to do so, Dealer shall have no further right to receive such vehicle or any other vehicle in lieu thereof.

(3) Vehicles shall be delivered by Seller hereunder in substantial accordance with the schedule and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Seller notice immediately upon cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Seller of a motor vehicle to apply against such order, Seller shall be released from any obligation to make delivery of such vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of cars to be supplied under this sub-paragraph 26B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of products to Dealer or any other act of Seller after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

27. Seller's Right to Repurchase When Agreement is Terminated

In the event of termination of this Agreement:

A. Seller will purchase from Dealer and Dealer will sell to Seller:

[fol. 398]

398

Cars

(1) All new and unused Pontiac motor vehicles and chassis of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including transportation charges paid to Seller thereon.

Parts

(2) All unused and undamaged Pontiac repair parts for the current and three (3) preceding models purchased direct from Seller and on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, exclusive of transportation charges thereon.

Accessories

(3) All unused and undamaged Pontiac accessories purchased direct from Seller during the six-month period immediately preceding the effective date of such termination and on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, exclusive of transportation charges thereon.

Signs

(4) Any signs belonging to Dealer of a type recommended by Seller and bearing the word "Pontiac", at a price mutually agreed upon by Seller and Dealer. If Seller and Dealer cannot agree on a price, they shall select a third party who shall set the price to be paid therefor.

Tools

B. If Dealer desires to sell the same, Seller will purchase all the special tools and mechanical shop equipment of a type recommended by Seller purchased by Dealer during the twelve (12) month period immediately preceding termination while he has been operating under a Pontiac Selling Agreement and designed specifically for Pontiac service, at a price mutually agreed upon by Seller and Dealer. If Seller and Dealer cannot agree on a price, they shall select a third party who shall set the price to be paid therefor.

C. Dealer shall, on or before the date of termination, furnish Seller with a list of the motor vehicles, chassis, parts, accessories, signs, tools and shop equipment aforesaid.

D. Upon demand and tender by Seller of the purchase price determined as aforesaid, Dealer will deliver such goods to Seller forthwith in accordance with Seller's instructions.

E. Dealer shall execute and deliver to Seller instruments satisfactory to Seller, conveying title to the aforesaid property. If such property is subject to lien or charge of any kind Dealer will procure the discharge and satisfaction thereof prior to the repurchase of such property by Seller.

28. Claims of Loss on Dealer's Premises

[fol. 399]

A. Terminations to Which Applicable

In the event of termination of this Agreement by Seller under the provisions of sub-paragraph B(1), B(2), or B(3)a of Paragraph 25 hereof or in the event Dealer and Seller do not enter into a new Selling Agreement upon the expiration of the term of this Selling Agreement, but not otherwise, Dealer may establish claims upon Seller for losses sustained on Dealer's premises in accordance with the provisions and limitations hereinafter set forth in this Paragraph 28.

B. Dealer's Premises to Which Applicable

The reimbursement for loss on Dealer's premises

269

399

provided for in this Paragraph 28 shall be applicable (except as provided in sub-paragraph F hereof) to premises used by Dealer exclusively in the performance of this Agreement, either as owner thereof or as lessee thereof, or as owner of part and lessee of part thereof, provided, however, that the premises involved shall have been owned or leased prior to the time that Dealer had knowledge that a termination on one of the bases specified in sub-paragraph A of this Paragraph 28 would become effective and that the ownership or lease of the premises shall continue subsequent to the effective date of termination of this Agreement.

C. Leased Premises

(1) Payments

Subject to the limitations set out in subsection (2) below, Seller will reimburse Dealer for one-half (½) of the monthly rental specified in Dealer's lease and paid by Dealer for the balance of the term thereof after the effective date of termination, not exceeding nine (9) months from the effective date of termination, provided, however, that the amount of liability shall not be more than Eighty-five Cents ($0.85) per month per car (one-half (½) of the rent standard of One Dollar and Seventy Cents ($1.70) per car per month established by Seller), based on the number of Pontiac motor vehicles and chassis purchased hereunder by Dealer in the twelve (12) months immediately preceding the effective date of termination.

(2) Limitations

(a) In the event the premises involved or any part thereof are occupied by anyone for business or any other purpose at any time after the effective date of termination, or, in the event the premises involved or any part thereof could, in the opinion of Seller, be occupied by Dealer for any business with which Dealer may be associated at any time after the effective date of termination, Dealer shall not be entitled to any payment for loss hereunder beyond the initial date of such occupancy or the date when, in the opinion of Seller, such occupancy could have been effected, provided, however, that in the event of immediate termination pursuant to sub-paragraph B(3) a of Paragraph 25 hereof, the premises may be used by the dealership for a period of three (3) months immediately following the effective date of termination without affecting the dealership's right to make claim hereunder for a period of nine (9) months commencing with the conclusion of such use, but no claim will be allowed for the time said premises are so used.

(b) In the event Dealer secures a reduction in rent at any time applying to the period covered by his claim, the amount of his claim shall be reduced proportionately based on the ratio that the monthly rental reserved in the lease bears to the reduced monthly rental.

(c) In the event Dealer makes a settlement with his lessor at any time during the term of his lease, such settlement shall be treated as a reduction in rent in accordance with the preceding sub-paragraph (b) unless accompanied by the surrender of possession, in which case no claim shall be made by Dealer for any loss after the date of such surrender of possession, and Seller shall not be liable to Dealer therefor.

[fol. 400]

270

400

D. Owned Premises

In the event Dealer has been using premises owned by Dealer exclusively in the performance of this agreement, Dealer may establish a claim upon Seller for one-half (1/2) of the net loss sustained by Dealer in connection with said premises for the period that the same are owned by him subsequent to termination of this Agreement based on the then current fair rental value, such claim, however, not to exceed the amount of liability computed in accordance with the provisions and subject to the limitations of sub-paragraph C of this Paragraph 28. In determining net loss, only such items as would be usually chargeable to a tenant shall be included.

E. Premises Partially Owned and Partially Leased

If Dealer is using premises leased by him as well as premises owned by him in the performance of this Agreement, Dealer's claim upon Seller for the portion leased by Dealer shall be computed in accordance with the provisions of sub-paragraph C of this Paragraph 28 and for the portion owned by Dealer shall be computed in accordance with the provisions of sub-paragraph D of this Paragraph 28.

F. Exceptions

In the event that the premises or any part thereof used by Dealer in the performance of this Agreement are also used in the performance of a selling agreement covering any other make of motor vehicle manufactured by General Motors Corporation and in the event that within a period of three (3) months all such selling agreements are terminated on any one of the bases specified in sub-paragraph A of this Paragraph 28, then and in that event, notwithstanding the provisions of sub-paragraph B of this Paragraph 28 requiring the exclusive use of the premises involved for performance of this Agreement, Seller will secure for Dealer in conjunction with the Divisions of General Motors Corporation which were parties to such terminated selling agreements, or in conjunction with authorized distributors of such Divisions of General Motors Corporation who were parties to such terminated selling agreements, settlement for loss in substantial accord with the provisions of such terminated selling agreements, but such settlement for each allowable month on behalf of all Divisions shall not exceed one-half (1/2) of the monthly rental or fair rental of the premises.

If the selling agreement covering such other make of General Motors vehicle is with a person, firm, or corporation other than Dealer herein in the aforesaid circumstances, but Dealer or the principal stockholders or partners of Dealer herein are the principal stockholders, partners, or the owners of such other dealership, then Dealer and such other dealership shall be treated as one and the same Dealer and reimbursement shall be made under the provisions of this sub-paragraph F.

[fol. 401]

G. Time for Filing Claims

Seller shall not be liable to Dealer under this Paragraph 28 on claims covering loss on premises leased or owned by him unless the same are filed within two (2) months after the expiration of the period covered by said claim. Seller will pay such claims filed in accordance herewith on or before two (2) months after the date of receipt thereof. Dealer may file interim claims, and interim settlements thereon may be made by Seller at Seller's option. Seller shall have access to Dealer's books and records and may audit same insofar as may be necessary to verify claims filed hereunder.

271

401

29. Dealer Not Made Agent or Legal Representative of Seller

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Seller for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Seller or to bind Seller in any manner or thing whatsoever.

30. Responsibility for Dealer's Commitments

Dealer shall be solely responsible for any and all obligations or liabilities incurred or assumed by him in the performance hereof, and Seller shall not be held responsible in any manner therefor, irrespective of any suggestion or recommendation with respect thereto by Seller or any of its employes or representatives unless Seller has agreed to assume the responsibility, either in whole or in part, by written agreement executed by its General Manager or its General Sales Manager, except insofar as it is specifically provided otherwise in this Agreement.

31. Notices

Any notice required to be given by either party to the other hereunder or in connection herewith shall be in writing and delivered personally or by mail. Notices to Dealer shall be directed to Dealer, or his representative at Dealer's place of business; notices to Seller shall be directed to the Zone Manager of the area in which Dealer is located.

32. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

33. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision herein in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

34. Sole Agreement of Parties

This Agreement shall be binding upon Seller when signed by the General Manager, General Sales Manager, an Assistant General Sales Manager, a Regional Manager, or Zone Manager of Seller. However, no change in, addition to, or erasure of, any printed portion of this Agreement (except the filling in of blank lines) shall be valid or binding upon Seller, unless it is expressly declared to be a modification of this Agreement and is approved as such in writing by the General Sales Manager of Seller.

There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Pontiac motor vehicles, chassis, parts or accessories. This Agreement cancels and supersedes all previous agreements between the parties hereto.

[fol. 402]

272

402

[fol. 403]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

[Title omitted]

EXCERPTS FROM PLAINTIFF'S EXHIBIT No. 3

PORTIONS OF PONTIAC OFFICE MANUAL SETTING FORTH ZONE OFFICE PROCEDURES

• • • • • • •

[fol. 404] L-1

BUSINESS MANAGEMENT DEPARTMENT

The purpose of the Business Management Department is three-fold:

1. To build and maintain profitable dealers amply capitalized.
2. To promote the sale of a constantly increasing volume of Pontiac products.
3. To enable our field organization to make more efficient dealer contacts.

Business Management embraces two very distinct, but related phases:

1. The Accounting Job

   and

2. The Business Management Program

THE ACCOUNTING JOB

The Accounting Job consists of selling the "General Motors Dealers' Standard Accounting System" to dealers, supervising its installation and subsequent training of bookkeepers in its proper operation. This is essential because unless accounting systems are installed and correct financial statements received, it is impossible to get the necessary facts regarding dealer operations to carry on the Business Management Program.

Revised July 1, 1958

THE BUSINESS MANAGEMENT PROGRAM

The broad objectives of the Business Management Program are to keep dealers on a profitable basis and to see that they are soundly capitalized. Briefly, the Business Management Program consists of setting up guides known as operating objectives and capital requirements and then checking by means of field contacts to correct out-of-line conditions and maintain dealers' operations in accordance with the plans and requirements set.

The dealer's monthly plan of operation is established in the dealer's place of business *by the dealer*. The Zone Business Management Manager should be present and where it is deemed advisable, the Zone Manager should also be present. The plan should be set up at the beginning of the year, for the entire year and the month of January, and each month thereafter, taking into consideration the deal-

L-2

[fol. 405] er's past performance, his potential market, and his physical facilities. The dealers with whom monthly plans are to be set and forecasts made are selected by the Zone Manager after consultation with his department heads. Some of the basic documents used for establishing and checking *operating plans* and *capital requirements* are shown in facsimile in Desk Plan Operations Nos. 171, 172, 173 and 178. National, Zone and Dealer Operating Guide Averages will be valuable in establishing operating plans and capital requirements and to enable subsequent check of the dealer progress.

HANDLING AND MAINTAINING BUSINESS MANAGEMENT RECORDS

ACCOUNTING SYSTEM POTENTIAL

Accounting system potential as of July 1, 1958 will consist of all dealers whose new car selling potential is in excess of 50 cars based on the new car sales potential revision of November 1, 1954, plus any dealers who were set up as potential as of June 30, 1958. Any additions to or deductions from accounting system potential will be made by the Central Office Business Management Department at Pontiac only.

HANDLING FINANCIAL STATEMENTS WITHIN THE ZONES

Dealer financial statements are due in the Zone Offices by the 10th of each month. *Follow-up should begin the morning of the 11th on statements not yet received.* A check card, Form 930, should be set up in a card file containing the names of all dealers who are established as accounting system potential. Each statement, as it is received in the Zone Office, should be checked off on this card, which will then provide a record showing the arrival date of each statement each month and will provide this same information for the full 12 months. See Desk Plan Operation No. 171.

As the statements are received, they should be stamped (A) with the zone name, (B) Pontiac supervision if applicable, and (C) the dealer's classification. See Desk Plan Operation No. 171.

One copy of the financial statement is retained in the Zone Office and the other copy (which must be legible) is mailed to the Central Office at Pontiac. Statements should be mailed to Central Office *daily* as they are received and should not be accumulated in the zones.

In addition to the 10 items simply checked by the Zone and outlined in Operation No. 171, other frequent errors and omissions will be checked by Central Office as further outlined in the above Operation.

L-3

[fol. 406] All of the errors and omissions noted by the Zone and Central Office are to be charged against the dealer's bookkeeper at 1 point for each. The Zone items are individually noted on Form 930, as provided, and before mailing the statement. The Central Office items will be reported monthly to the Zone and recorded on Exhibit B and as detailed in Desk Plan Operation No. 171. A line on Form 930 "Errors Found at Central Office" is to be used for recording the lump sum of these additional points to be charged against the dealer's bookkeeper. Operating Guide Averages completed and returned to the Zone quarterly give the bookkeeper 2 bonus points each three months.

Two bonus points are also given the bookkeeper each month for submitting the dealer's monthly plan of operation. The Zone will notify the dealer's bookkeeper of each of the errors and omissions to obtain elimination through correction of the dealer's original records. It is essential that all deviations be corrected as soon as possible after discovery.

In addition the General Motors Corporation requires for their year end composite the elimination of errors as follows:

1. Obsolete Form.
2. Before Year-End Adjustments.
3. Illegible (Avoid use of ball point pens, watch slipping carbons, strike-overs, reproductions.)
4. Incomplete data, New Car Department, Page 4 (off line or off column) (Accessories or Freight and Handling not broken down), (Discounts not shown).
5. Incomplete data, Service Section, Page 4 (Factory Claims, Internal and Sublet not broken down).
6. Incomplete data, Parts Section, Page 4 (Counter, Wholesale, Factory Claims, and Internal not broken down).
7. Incomplete data, Accessories Section, Page 4 (Counter, Factory Claims, and Internal not broken down).
8. Figures on wrong lines. ("Parts-Wholesale" figures shown on "Parts-Repair Orders—Commercial" line).
9. Sale of Miscellaneous items, such as farm machinery, motor scooters and electrical appliances (with the exception of truck tractors, house trailers and buses) shown in New or Used Car Department.

L-4

[fol. 407] HANDLING FINANCIAL STATEMENTS AT CENTRAL OFFICE

When financial statements are received in the Central Office they are checked for classification, for accuracy, and to see that no necessary information is missing. After

the statements have been checked in this manner they are summarized and composited. The Dealer Operating Record, form #934, is then typed, re-checked and the two Zone Office copies are mailed to the zones for Zone and District Manager usage. The dealer copy goes forward direct from Central Office.

ACCOUNTANTS' HONOR ROLL

Each zone will issue a Ranking Sheet for dealer bookkeepers, using Form 931, "Honor Roll", showing the standings for both the month and cumulative year-to-date. All Pontiac dealer accountants in the zone will be graded as outlined in Desk Plan Operation No. 171.

DEALERS OPERATING RECORD (FORM 934)—ALL PONTIAC CONTROL STATEMENT DEALERS

At the beginning of each six month period on a calendar year basis, a Dealer Operating Record will be set up for each Pontiac financial statement dealer for use by the District Manager, with a copy for the Zone. Dealer's copy is mailed direct from Central Office. Central Office also forwards a copy to the other Divisions with which a dealer is dualled. Each Control Record should contain the following information:

1. Dealer's name and location.
2. Zone name and year.
3. Average month figures for last year.
4. There is a blank column for insertion of the dealer's plan of operation.
5. This record will be completed each month and will show the above information plus the current and previous month's operation. (Last month's record can then be destroyed.)

MAINTENANCE OF RECORDS WITHIN THE ZONE

Current financial statements and the previous month's should be kept in a binder in alphabetical order by dealer

town. A special binder is used for Current Year Dealer Operating Records, Form 934.

L-5

[fol. 408] A separate folder for each financial statement dealer should be set up in which the dealer's statement would be placed after the records are received for the months after the current and previous month statements.

At the end of the year: (1) All statements for January through November 30 are to be removed from the dealers' current file, leaving only December 31 statements. (2) June and December Dealer Operating Records are left in the special binder to serve as guides until the current year record is received.

N-1

[fol. 409] This section of the Zone Office Manual contains Policies of Pontiac Motor Division as related to Dealer Selling Agreements and associated matters.

DEALER SELLING AGREEMENTS

CONTRACTUAL RELATIONSHIP

The Pontiac Selling Agreement is always directly between the dealer and Pontiac Motor Division

TERM

A new dealer may choose to execute a Pontiac Selling Agreement for a term of five (5) years, one (1) year, or for a Continuous term. In consummating an organizational change or a Partial Sellout of an existing dealer, the term will be the unexpired term of the terminated Selling Agreement.

EXECUTION OF NEW SELLING AGREEMENTS

New Selling Agreements to be executed with dealers require Regional and Central Office approval in the following instances:

1. Metropolitan Area locations
2. Fringe Area locations
3. Dual Dealerships

Revised August 15, 1958

4. Chain Dealerships
5. Motors Holding deals
6. Where new individual is acquiring financial interest in a dealership.

In all of the instances above, the Zone will submit Form 412, Application Forms, and other necessary papers for approval prior to execution of the Selling Agreement.

IN THE FOLLOWING INSTANCES THE ZONE WILL OBTAIN CLEARANCE FROM CENTRAL OFFICE PRIOR TO SUBMISSION OF FORM 412 WITH APPLICATION(s) AND ASSOCIATED PAPERS COVERING A PROPOSAL:

1. Where a Metropolitan Area Survey has not been completed or an existing dealer desires to move to a different geographical location.

[fol. 410] N-2

2. A complete sellout or closing an Open Point where a "Blueprint" for closing has not been established for the dealer location.
3. Completing a Partial Sellout where the individual named exclusively as Operator in Paragraph Third will not continue as such in the new dealership.

In all other instances where none of the above situations exist, the Zone may approve a proposal subject to Regional approval as required.

VAUXHALL DEALER SELLING AGREEMENTS.

Vauxhall Dealer Selling Agreements may be executed with Pontiac dealers. Tip-In Sheets, when signed, are governed by the terms and conditions of the Pontiac Selling Agreement, and Term is the same. In all instances, a Vauxhall Dealer Selling Agreement automatically terminates with the termination of a Pontiac Selling Agreement. In Pontiac-Buick duals where Buick has Control, a Vauxhall Selling Agreement may not be offered the dealer unless Buick or

the dealer does not desire to execute an Opel Selling Agreement. If a GM dealer other than Pontiac requests a Vauxhall Selling Agreement the Zone will forward its recommendation to Organization and Analysis Department, Central Office.

GENERAL

Copies of Dealer Selling Agreements (Tip-In Sheets) retained by the Zone should be stamped "Zone Office Copy" in the upper right corner of the front page. Dealer's copies should be stamped "Dealer's Copy".

Signed Selling Agreements will be forwarded to dealers with a letter of transmittal via certified mail return receipt requested. Insert return receipt in Dealer Selling Agreement file.

When a dealership status changes from Proprietorship or Partnership to Corporation or vice versa the Zone will be guided by instructions contained in Desk Plan Operation No. 444.

METROPOLITAN AND FRINGE AREAS

METROPOLITAN AREAS

The term "Metropolitan Area" is used to designate the Selling territory of our dealers operating in the following areas:

(a) All cities having a population of 50,000 or more. Excepted may be some cities reaching 50,000 since the 1950 census but not as yet covered by Master Plan Letter.

[fol. 411] N-3

(b) Certain agreed points where two or more Pontiac dealers have joint selling rights or where the closing of one or more agreed open points would establish joint selling rights between two or more dealers.

All Metropolitan Areas have been or are being surveyed to determine the maximum number and approximate geo-

graphical locations of the Pontiac dealers who will operate therein. Booklets describing in detail the "Metropolitan Areas", as well as the "Fringe Areas", have been furnished to the Zones.

In all Metropolitan Areas approval must be secured from Central Office before:

1. Moving any Dealer
2. Replacing any Dealer
3. Signing any New Dealer
4. Adding any Dealer Branch Service Department
5. Changing Dealer Status

MASTER PLAN FOR METROPOLITAN AREAS (DOES NOT APPLY IN STATE OF TEXAS)

A Metropolitan Area Addendum (Form 450-ADD) is executed with each Metropolitan Area dealer except in the State of Texas. The Addendum states that Pontiac will inform the dealer of the confines of the area, the maximum number of dealers located therein and their approximate geographical locations. This is accomplished by issuing each dealer a Master Plan Letter. Copies of these letters will be retained in the dealer's Selling Agreement file by the Zone.

When a Selling Agreement is executed with an existing Metropolitan Area Dealer to consummate a name change or a move to a different address in the same geographical location, a new Master Plan Letter will be sent such dealer. Should there be a change in the definition of the Metropolitan Area or the maximum number of dealers or the geographical locations, a new Master Plan Letter is sent to all dealers in the area.

In each instance requiring a new Master Plan Letter, the Zone is furnished with instructions by Organization and Analysis Department, Central Office.

PROCEDURE FOR CHANGING THE NUMBER OR LOCATION OF METROPOLITAN AREA DEALERS OR THE METROPOLITAN AREA DEFINITION

The Metropolitan Area Addendum specifies that a change may not be made in a Metropolitan Area without first notifying all dealers in the area and delaying sixty (60) days before consummating the change. Dealers may waive the sixty-day period of delay, but unless all dealers in the area waive, the change is deferred until expiration of the sixty days.

N-4

[fol. 412] A Letter of Notification, over the signature of the Zone Manager, is sent each dealer with a Waiver Letter which the dealer is requested to execute and return to the Zone. Upon receipt of signed Waiver Letters from all dealers in the area, the Zone files a copy of the Letter of Notification and signed Waiver Letter in each dealer Selling Agreement file and advises Organization and Analysis Department, Central Office in accordance with instructions issued by that office. Sample Letter of Notification and Waiver Letter are furnished the Zone by the Organization and Analysis Department.

After receipt of signed Waivers from all dealers in the area or the expiration of the sixty-day period, a revised "Master Plan" letter should be sent by the Zone Manager to each dealer in the area advising him of the current Metropolitan Area definition and the maximum number and the approximate geographical locations of the dealers in the area. (Sample furnished by Organization and Analysis Department.)

Two copies of the letter forwarded to one dealer are to be sent to Central Office Organization and Analysis Department. All other dealers in the Metropolitan Area are to be listed on the reverse side of these copies, their address, geographical location and date letter was sent to each one.

FRINGE AREAS

The "Fringe Area" in general, is an area bordering on the "Metropolitan Area" and extending outward for a distance

of approximately 20 miles from the city limits; it comprises those towns where cross-selling into or out of the "Metropolitan Area" may develop.

A complete description of the fringe areas surrounding each Metropolitan Area is contained in the Metropolitan Area Booklets furnished the Zones.

In all fringe areas the Zones must secure Central Office approval for the establishment of any new open point or the replacement of an existing open point. Such approval is required regardless of the number of dealers in the key city or fringe area. After approval by Central Office the Zone will be advised.

• • • • • • •

N-6

[fol. 413] Form T-450 A is used whenever a new Selling Agreement is being signed with a new dealer or with an existing dealer for a term of five (5) years or one (1) year. Form C-450 is used to execute Selling Agreements where the dealer elects a continuous term.

DEALER SELLING AGREEMENT FILES

Zones are to maintain individual dealer files in which all copies of the dealer's Selling Agreements and auxiliary papers are to be assembled continuously with the current Selling Agreement papers on top. Secure with an appropriate clip. This will provide a complete dealer history on Selling Agreements, appendices, addendums, price lists and discount sheets, special agreements, etc., in one folder, filed in chronological order.

The file is to be segregated between active and terminated dealers.

Under no condition should any files be destroyed without approval from Central Office.

TERRITORY DESCRIPTION

The terminology to be used in Paragraph First of the Selling Agreement to define the area of responsibility of a dealer is as follows:

All Cities and Towns Under 50,000 population (Having individual areas of responsibility)

The name of the State and County followed by dealership city or town in capitals. After this list all other communities in the dealer's zone of influence.

Example: In the State of Michigan
Livingston County—HOWELL, Conoctah, Fowlersville, Hartland, Oak Grove.

All Cities Over 50,000 Population (Not included in other Metropolitan Area definitions)

1. Where the recommended G.M. Metropolitan Area includes only the corporate limits of the city, the name of the city or town only will be typed in Paragraph First.

Example: In the State of Virginia. Roanoke (List in addition all communities outside the Metropolitan Area which are in the Roanoke zone of influence).

N-7

[fol. 414] 2. Where the recommended G. M. Metropolitan Area descriptions extends beyond the limits of the Principal city, the recommended G. M. Metropolitan Area definitions as set forth in the current Master Plan letter will be used.

Include in addition all communities outside the Metropolitan Areas which are in the dealer's zone of influence.

SIGNATURES ON SIGNATORIAL ATTACHMENT PORTION OF SELLING AGREEMENT

The individual, or individuals, signing Form T-450A or C-450 (Tip-In Sheets) for the dealership must be an officer of the firm authorized to do so, or a person so authorized by Power of Attorney from the dealership. A copy of such Power of Attorney form must be retained in Zone dealer Selling Agreement file. (Submit copy to Organization and Analysis Dept. for approval).

SIGNATURES IN PARAGRAPH THIRD OF SIGNATORIAL ATTACHMENT TO SELLING AGREEMENT

1. Ownership of an appreciable financial interest in a dealership qualifies an individual to be named in Paragraph Third of the Selling Agreement (Form T-450A or C-450) as Owner. To qualify for designation in Paragraph Third as Operator an individual must be actively engaged in the overall management of the dealership. An individual may qualify for designation in both categories. The dealer and the Zone may decide upon the designation of individuals in Paragraph Third. However, in all instances where it is proposed that an individual be designated in Paragraph Third in addition to an individual or individuals already appearing therein, the Zone will obtain approval of the appropriate Assistant General Sales Manager. A copy of the Assistant General Sales Manager's letter approving the addition will be forwarded to Organization and Analysis Dept., Central Office.
2. In Proprietorships the owner will be designated in both categories. In Partnerships and Corporations only such individual(s) as are actively managing the dealership may be shown in the operation category. This restriction does not apply to designation as owner.
3. Where a paid Manager is designated as operator he must be authorized by the dealership through proper Power of Attorney.
4. Each person appearing in Paragraph Third must affix his signature therein.

TERMS AND CONDITIONS BOOKLETS—FORMS T-451 OR C-451

These booklets contain the provisions of the Selling Agreement. No signatures are necessary and no additions of any nature are to be made to same except that the dealer's copy

[fol. 415] of the signed Signatorial Attachment portion of the Selling Agreement, Form T-450A or C-450, is to be attached in the space provided. The documents then be-

come one and are to be forwarded to the dealer (Certified Mail, Return Receipt Requested). Further exceptions are instruments signed by the General Sales Manager and acknowledged by the dealer such as: Dealer Statement of Ownership Form 459, Standard Warranty Form 454, Price List Form 457 and others.

In view of the fact that all copies of Forms T-451 or C-451 Terms and Conditions are identical, it is not necessary that the Zone have a duplicate copy for each dealer file. Five copies of each form, however, should be marked "Master Reference Copies" and filed in the Zone file for future reference.

TERMINATION OF DEALER SELLING AGREEMENTS

VOLUNTARY TERMINATION—Outright (No immediate successor)

Voluntary Termination may be submitted by a dealer on the following basis:

1. To be effective one (1) month after receipt of such notice by Seller.
2. To be effective immediately upon receipt of such notice by Seller.

In the event a Dealer desires to voluntarily terminate his Pontiac Selling Agreement and he is not succeeded by a new dealership, he should submit, on *dealership letterhead* an original and four (4) copies of a letter of termination prepared in accordance with Termination Letter I or II (See Exhibits to Desk Plan Operation No. 451).

Upon receipt by the Zone Office of the Dealer's letter of voluntary termination, same should be checked to make certain that all parties named in Paragraph Third of the Selling Agreement have signed the letter, and in addition that any person holding the controlling financial interest in the dealership has also signed. In a Corporation the President should also sign.

VOLUNTARY TERMINATION—ORGANIZATIONAL CHANGE

In the event a Pontiac Dealer wishes to effect an organizational change consisting of a change in name, status, location (where territory description changes), or party designated in Paragraph Third of the Selling Agreement, the Zone will make no commitment to the dealer until the proposal has been approved at the required level. (Prepare Form 412 and obtain approval as required.) Following N-9
[fol. 416] approval the dealer should prepare a letter, original and four (4) copies on *dealer letterhead* in accordance with Termination Letter III (See Exhibit to Desk Plan Operation No. 451.)

VOLUNTARY TERMINATION—SELLOUT

In the event a Pontiac Dealer may desire to sell the physical assets of his business to a party or parties whom we are desirous of signing as Pontiac dealers, before making any commitment to the dealer who wishes to sell, or to the prospects who are desirous of buying the deal and securing our Selling Agreement, the Zone will be governed insofar as the necessary approval is concerned, by the conditions applying to the signing of a new dealer. See Pages N-1 and N-2. Following approval a letter will be obtained from the dealer in accordance with Termination Letter IV (See Exhibit to Desk Plan Operation No. 451.)

PROCEDURE FOR HANDLING DEALER LETTER OF TERMINATION AND ACCEPTANCE OF SAME BY PONTIAC OVER SIGNATURE OF GENERAL SALES MANAGER OR ASSISTANT GENERAL SALES MANAGER

Upon receipt in the Zone Office of the dealer's letter of voluntary termination, make certain that four (4) additional copies are available. Upon the original letter and each copy, the Zone will "date stamp" the date the letter was received by Pontiac. When received directly from the dealer by mail, the date to be stamped will be that on which it was received in the Zone Office. When given by the dealer to an authorized representative of Pontiac, the date to be

stamped will be the date upon which such representative was given the letter. One *copy* of the dealer's letter of termination must be sent to Organization and Analysis Department, Central Office, attached to Form 412 and a letter of transmittal which will affirm the date the letter was received from the dealer and state the reason therefor. A letter *signed by the General Sales Manager* or *Assistant General Sales Manager*, will be sent the dealer *from Central Office* in acknowledgment of his letter of termination with copies to Region and Zone Offices.

NOTE: It is necessary that termination of the previous Selling Agreement precede or be simultaneous with the effective date of the new Selling Agreement so that duplicating Selling Agreements will not be in existence at the same time. The Zone will proceed with the signing of the new Selling Agreement and associated papers without waiting for the dealer to receive the acceptance letter.

RECORD OF VOLUNTARY TERMINATION—FORM 432

Following receipt of dealer's letter of voluntary termination and arrangements for fulfilling Pontiac's obligations to the terminated dealer, the Zone Office will prepare four copies of Form 432 with all data required properly inserted. A copy of the dealer's letter of voluntary termination should be attached to each copy of the form, all of which will be signed by the Zone Manager. Where the change requires

[fol. 417] Central Office approval (See Page N-1) the Original and three (3) copies of the form will be sent to Organization and Analysis Dept., Central Office via the Regional Manager and appropriate Assistant General Sales Manager. Central Office will return the original to the Zone and one (1) copy to the Region. In all other instances the Zone will forward the original and one (1) copy of Form 432 via the Region to Central Office, providing one (1) copy for the Region and retaining one (1) copy.

INVOLUNTARY TERMINATION OF DEALER'S SELLING AGREEMENT FOR REASONS OTHER THAN DEATH OR INCAPACITY

Pontiac may involuntarily terminate a Dealer's Selling Agreement for cause, to be effective upon receipt of a Letter of Involuntary Termination by the dealer, or to be effective three (3) months following receipt. Also, Pontiac may terminate without cause during July, August or September of any year where a dealer is operating on a Continuous type Selling Agreement.

In order to make certain that the equities of our dealers are fully protected and that no dealer Selling Agreements are terminated without every consideration being given to such equities, as well as the responsibilities of the dealer to Pontiac Motor Division, there should be *NO* reference made to the involuntary termination of a dealer's Selling Agreement until the following procedure is adhered to:

Whenever conditions arise in a dealership where, in the opinion of the Zone Manager, our position is jeopardized, the Zone Manager should thoroughly discuss same with the dealer, making his recommendations as to how the unsatisfactory conditions can be corrected.

At the time of the initial conference between the Zone Manager and the dealer, the Zone Manager should list, in duplicate, the specific out-of-line conditions under discussion and the recommended corrective measures to be taken. A complete understanding should be reached with the dealer that we are interested only in improving his operation to our mutual benefit and our recommendations are only suggested means by which he may realize such results.

On subsequent contacts, when the out-of-line conditions are again reviewed, the same procedure should be followed. This should continue until the out-of-line conditions are corrected or it becomes apparent that the dealer does not intend to take corrective action. A complete file will be maintained covering in detail every effort that is made to correct the out-of-line conditions, and every evidence secured to support any position that we may take regarding the failure of the dealer to correct same.

The file should contain *specific evidence* as to:

(a) When the unsatisfactory conditions were first brought to the attention of the dealer.

N-11

[fol. 418] (b) What your recommendations were to the dealer to correct the situation.

(c) What the dealer agreed to do or refused to do to correct the situation.

(d) What the dealer did to carry out his agreement.

(e) Results of his efforts—performance, facilities, finances, etc.

(f) What the Zone did to help the dealer correct the situation.

(g) History of contacts by Pontiac personnel.

(h) Reason for recommending involuntary termination.

At no time should the subject of termination be used to induce the dealer to perform in accordance with the Selling Agreement. When it becomes obvious that termination of the Selling Agreement is justified and necessary to protect our interests, the Zone and Regional Manager and Assistant General Sales Manager should carefully review the Zone Office file to make certain that the information contained therein is sufficient to support a termination, after which contact should be made with the dealer by the Zone Manager and the entire situation reviewed with him together with his inability or unwillingness to perform satisfactorily. If the dealer at that time does not indicate his willingness to terminate his Selling Agreement voluntarily, he should be informed that every assistance possible has been given by the Zone personnel and the entire situation will be referred to Central Office. The Zone should then prepare a letter stating the results of the Zone Manager's contacts with the dealer, the deficiencies which exist and the failure of the dealer to cooperate. The letter and the entire dealer file will be sent to Central Office. After a review of the entire file in Central Office, the Zone Manager will be advised whether or not a letter of involuntary termination will be issued.

INVOLUNTARY TERMINATION DUE TO DEATH OR INCAPACITY OF DEALER

In the event of the death or incapacity of the dealer or any other person named in Paragraph Third of the Selling Agreement, we may after the lapse of thirty (30) days following such occurrence terminate the Selling Agreement by written notice.

The Zone will immediately send Organization and Analysis Dept., Central Office a letter containing the following information:

1. Full name of deceased or incapacitated individual.
2. Date of death or incapacity.
3. Position in dealership.
4. Financial interest in dealership.

• • • • • • • •

N-17

[fol. 419] The Zone will follow the same procedures as outlined for termination *for cause* but will submit the entire file and recommendation prior to June 1st of any year.

All dealer files must be complete and of sufficient scope to substantiate a decision by Pontiac to terminate the Selling Agreement. Forward with Zone recommendation to terminate through the Region and appropriate Assistant General Sales Manager.

INTERIM DEALER SELLING AGREEMENT

This agreement, executed with a nominee in an Interim Agreement Addendum, is for a term of twenty-four (24) months during which the nominee is to be judged and evaluated as to his acceptability for a Dealer Selling Agreement upon expiration of the Interim Dealer Selling Agreement. The Zone will maintain an adequate file to facilitate reaching a decision regarding the individual's acceptability at least four (4) months prior to expiration of the term of the Interim Dealer Selling Agreement and forward its recommendation through the Region to Organization & Analysis Department. This will enable Central Office to advise the individual three (3) months prior to the expiration of the Interim Dealer Selling Agreement as to

its decision regarding the offering of a Dealer Selling Agreement to the individual.

LETTERS OF INVOLUNTARY TERMINATION

The Zone and Region will receive a copy of each letter of involuntary termination. Upon return of the registered receipt, Central Office will forward same to the Zone for inclusion in the terminated dealer file. After termination of the dealer's Selling Agreement becomes effective, no cars, parts, accessories, etc., are to be shipped to the former dealer nor any other transaction carried on unless cleared with Central Office, except the business incidental to the completion of Pontiac's Termination Obligations.

OBLIGATION TO REPURCHASE IN THE EVENT OF TERMINATION OF DEALER'S SELLING AGREEMENT

NEW CARS

In the case of terminations, either voluntary or involuntary, regardless of whether the Dealer is exclusive or dual, each Division involved will repurchase from the Dealer its own line(s) of (new and unused) motor cars of the current model.

A list of the cars should be made showing the model, body type, serial number, invoice number and amount paid for each car. Credit covering cars repurchased will be issued by the Zone on Zone Car Credit Memorandum, based on Dealer's net cost, including destination charges.

[fol. 420] PARTS

N-18

If the Dealer is an exclusive Dealer, then Pontiac Motor Division will repurchase that portion of the Dealer's parts stock eligible under the terms of the Dealer's Selling Agreement.

In a Dual Dealership where all Divisions terminate simultaneously (same effective date of termination) each Division will buy back those parts which pertain exclusively to that Division; the Division responsible for business management control of the Dealership will repurchase all of the Dealer's stock of eligible interchangeable parts. That Division may, in those instances where certain parts are not regularly stocked by them, return those parts to the Division normally stocking such interchangeable parts and receive credit therefor.

In the case of termination of a Dual Dealership where the various Divisions do not terminate simultaneously, the Division last represented by the Dealership shall repurchase from the Dealer all interchangeable parts as well as those parts used exclusively in its product.

In an instance where one Division withdraws from a Dealership and the other Division(s) elect to remain in the Dealership, an unbalanced stock condition of interchangeable parts might result. In this connection, the withdrawing Division would repurchase excess of interchangeable parts. If two Divisions were withdrawing from the Dealership, then such excess of interchangeable parts would be repurchased by the Division which had the latest effective date of termination.

ACCESSORIES

If the Dealer is exclusive, Pontiac Motor Division will repurchase all Accessories purchased directly from Pontiac during the twelve (12) month period immediately preceding termination.

In a dual dealership, the twelve (12) month limitation applies but other provisions governing the repurchase of Accessories are the same as those pertaining to the repurchase of Parts.

All Accessories to be repurchased from a terminated dealer under the terms of the Selling Agreement should be listed by the dealer on individual "Application for Authorization to Return New Material", Forms P.C. 659, and in addition

thereto, the date and number of the invoice on which the items were originally charged to the dealer are to be inserted. The Form is processed in the same manner as those pertaining to Parts. (See Desk Plan Operations (866-868).

[fol. 421] SIGNS N-19

The procedure outlined below will be followed in the repurchasing of signs in both voluntary and involuntary Dealer Terminations.

In the case of an exclusive Dealer, Pontiac Motor Division will repurchase from the Dealer any approved signs. (See Desk Plan Operations No. 459).

In the case of a Dual Dealership where all of the Divisions involved terminate their Agreements simultaneously each Division will repurchase any approved signs containing only its product name. Any signs containing the names of the products of two or more Divisions represented by the Dealership will be repurchased by the Division responsible for the Business Management control of the Dealership. This Division will dispose of such signs and any loss sustained in this connection will be charged back to the Divisions involved on the basis of the Dealer's purchases of new cars from each of the Divisions at applicable factors (refer to Organization & Analysis Dept., Central Office for instruction).

In those instances where the other Divisions involved in the Dealership do not withdraw, it would probably be more satisfactory and cheaper for the Divisions withdrawing to authorize the change-over of any signs in which its name is included and to pay such change-over cost.

In the case of a Dual Dealership where the termination dates are not simultaneous, then the Division last represented by the Dealership shall repurchase from the Dealer all authorized signs containing two or more product names. In those instances where credit covering signs repurchased is issued by Pontiac Motor Division, such credit will be issued by the Zone on Zone Sundry Credit. All of the signs

repurchased should be listed separately and in detail and the price agreed upon for each sign indicated.

Whenever such signs are disposed of by the Zone, the Zone Sundry Invoice should list in detail the signs sold and the price secured for same so that proper credit can be given the Zone for the sale of these items.

SPECIAL TOOLS AND MECHANICAL SHOP EQUIPMENT

In all Dealer terminations Pontiac Motor Division is obligated to repurchase all special tools of a type recommended by Pontiac and purchased by the Dealer during the three (3) year period immediately preceding the effective date of termination if the Dealer so desires.

N-20

[fol. 422] The procedure outlined below will be followed:

In the case of an exclusive Dealership, Pontiac Motor Division will repurchase all such special tools.

In the case of Dual Dealerships where the terminations of all Divisions are simultaneous each Division will repurchase the special tools which are exclusive to their particular product. All interchangeable tools will be repurchased by the Division responsible for the business management control of the Dealership. That Division will dispose of such tools and any profit or loss in excess of $100 will be pro-rated to the Divisions involved, on the basis of the Dealer's purchases of new cars from each of the Divisions at applicable factors (refer to Organization & Analysis Dept., Central Office for instruction).

In the case of Dual Dealerships where terminations of all Divisions are not simultaneous, then the Division last represented by the Dealership will repurchase all interchangeable special tools in addition to those items designed specifically for use in connection with its products. All withdrawing Divisions will repurchase only such special tools as have been designed specifically for their products.

When credit covering the repurchase from Dealers of special tools is issued, Zones should use Zone Sundry Credit and list in detail all of the items repurchased and the amount paid.

Whenever a portion or all of these tools are sold to another Dealer or otherwise disposed of, the Zone Sundry Invoice should list in detail such tools sold together with the price secured, so that proper credit can be given to the Zone for the disposition of these items.

Whenever special tools are repurchased from terminated dealers, if they are not sold to the succeeding dealer, it is advisable for the Zone to bring them to the Zone Office City from where they may be disposed of to another dealer.

CLAIMS FOR COMPENSATION ON PARTS PURCHASES SOLD AT WHOLESALE

In all dealer terminations, Pontiac Motor Division is obligated to compensate dealer, if he makes a legitimate claim, for Parts Purchases sold at Wholesale. Zones will handle in accordance with existing instructions.

In the case of dual dealerships where terminations of all Divisions are *not* simultaneous the terminated dealer may,

N-21

[fol. 423] if he desires to make a claim, prepare Claim Forms 769, 770 and 771 for the Division which has terminated. A claim will *not* be filed against a Division which is not terminating until the end of the calendar year. However, all Claims Forms will be forwarded to the Division having Business Management Control regardless of whether that Division has terminated or has *not* terminated. The Control Division will process the claim and upon approval will reimburse the dealer if the claim was against the Control Division or forward the claim to the Division which terminated with a recommendation that the approved amount of the claim be paid to the dealer by that Division.

CLAIMS OF LOSS ON DEALERS' PREMISES—INVOLUNTARY TERMINATIONS ONLY

Dealers whose selling agreements are terminated involuntarily, may be entitled to claims of loss on dealers' premises in accordance with the provisions of Section 26 in the Selling Agreement.

All applications by the dealership for assistance in the disposition of premises must be made in writing within thirty (30) days immediately following termination.

In GM Dual dealerships where all Divisions terminate simultaneously the Divisions will decide which will assume the obligation contained in Section 26B covering leased premises.

DEALERS RECALLED TO ACTIVE MILITARY DUTY

In those instances where an individual named in Paragraph Third of the Pontiac Selling Agreement, and looked upon by Pontiac as the operating principal of the dealership, enters military service, the procedure for handling shall be as follows:

1. Pontiac should be notified by the individual that he is entering Military Service and will be unable to devote his personal attention to the dealership and requests Pontiac approval for his Selling Agreement to remain in effect during his absence in Military Service.
2. The operating principal who is departing will be informed by the Zone Manager that he must select and appoint an acceptable Manager for the dealership, to act in his behalf during his absence while in Military Service.
3. Upon being informed by the operating principal that he has selected a Manager, the Zone will advise Organization & Analysis Dept., Central Office and await instructions as to proper procedure.

[fol. 424]

N-22

ASSOCIATED ORGANIZATION AND ANALYSIS DEPARTMENT—FORMS

DEALER APPOINTMENT NOTICE—FORM 401—SEE OPERATION #441 IN DESK PLAN

Use this form on all appointments.

DEALER TERMINATION NOTICE—FORM 402—SEE OPERATION #456 IN DESK PLAN

Use this form on all terminations.

10-DAY ORGANIZATION REPORT—FORM 403—SEE OPERATION #471 IN DESK PLAN

This report provides a uniform method of reporting changes in the Dealer organization. Any numerical summary of outlets, whether on a Zone, Region or National Basis, is taken from the Ten-Day Organization Report. It is, therefore, essential that this report be complete and accurate.

NEW CAR RETAIL DELIVERIES AND PURCHASES—FORM 406—SEE OPERATION #408 IN DESK PLAN

This is a report of month and year-to-date deliveries of new cars and year-to-date purchase of new cars by all dealers.

DIRECT DEALER'S RECORD—FORM 417—SEE OPERATION #437 IN DESK PLAN

DEALER DATA SHEET—FORM 467—SEE OPERATION #421 IN DESK PLAN

DUAL DEALER REPORT—SEE OPERATION #475 IN DESK PLAN

The statistics on Dual Dealers are prepared from information listed on Dealer's Record Sheet, Form 417, and Appointment Notice, Form 401, submitted by the Zones. If "other car lines" handled by a Dealer change after the Dealer Record Sheet and Appointment Notice have been forwarded to Central Office, it is necessary that the Organization and Analysis Department be advised of such changes.

DUAL DEALERSHIP INTERPRETATION

The interpretation of what constitutes a Dual Dealership is as follows:

If any part of the dealer's property (new car showroom, used car lot or display room, service station) is used by two or more franchises in common, then all of the franchises that jointly use any or all of the dealer's property shall be considered part of a dual dealership. This applies whether the properties are all under one roof, or whether they are split up and separated from each other in various locations.

It applies in the event that one or more of the franchises using the same properties in common are operating under

N-23

[fol. 425] different firm names (sole proprietorships, partnerships or corporations), or whether they all have the same firm names, provided that all of the franchises under consideration use all or part of the dealer's property in common.

In the case of a service station that is definitely partitioned off with separate tools, separate management and separate book-keeping existing for each of the various franchises operating under separate firm names, no dual dealership would exist, provided separate written leases are executed for each of the franchises.

The test of a dual dealership is the common usage by two or more franchises of any or all of the premises of the dealership, operating under one written lease. Common usage is construed as the joint use by all of the franchises concerned of the physical space and the facilities contained in that particular space.

DUALING POLICY

Dual dealerships are comprised of two or more lines of cars or trucks when the additional lines are General Motors or otherwise.

Whenever a General Motors Division, because of an open point or the expressed desire of a dealer to sellout, desires

to establish a replacement dealer the matter will be presented to the Corporation which will forward to that Division and all others concerned a suggested "Blueprint" for the point being considered. The objective of the "Blueprint" is to provide dealers with sufficient profit opportunity to make possible a profitable operation for dealers in the market concerned by the "Blueprint".

LARGE METROPOLITAN AREAS ARE STUDIED THROUGH SPECIAL SURVEYS

Upon being advised by the Corporation of a suggested "Blueprint" for a specific area, Organization & Analysis Department will inform the Zone and request the Zone to forward its recommendation.

1. Where a new dualing is suggested with an existing Pontiac dealer, the following should be considered:
   a. Are the dealer's facilities adequate, and if not, is it felt that he can provide same.
   b. Does the dealer have adequate capital, and if not, can he provide additional capital.

N-24

[fol. 426]

   c. Is the sales performance of the dealer satisfactory and does he have the ability to handle the additional responsibility.

   The Zone recommendation should be forwarded promptly so as to expedite finalization of the "Blueprint" by the Corporation. Where the original suggested "Blueprint" cannot be accomplished, the Corporation will, where possible, offer an alternate.

2. Where the dualing of Pontiac with another General Motors dealer is suggested, the following should be considered:
   a. Does Pontiac require continued representation in order to cover the market satisfactorily.
   b. From the Zone's knowledge of the dealers facilities, are they adequate.

c. Is the dealer doing an acceptable sales job as reflected by registrations.

While Zones may contact the local Zone Manager(s) or Distributor of the Division(s) concerned, it is desired that the Zone recommendation largely reflect the independent thinking of the Zone. Should the Corporation receive conflicting recommendations from the Divisions, it will be frequently suggested that a joint contact be made upon the dealer for the purpose of resolving the matter.

NOTE: It is important that no contact be made upon the dealer of another Division prior to Divisional approval of the proposed dualing unless prior to such approval the Corporation suggests a joint contact by Divisions concerned, or the Zone receives written permission from the other Division(s) to contact their dealer.

When final approval for the dualing has been received, the Zone will contact the dealer. When he is desirous of adding Pontiac and qualifies, the Zone will submit the proposal through prescribed channels for approval.

DEALER'S ZONE OF INFLUENCE MAPS— SEE OPERATION #493 IN DESK PLAN

DISTRICT MAPS— SEE OPERATION #494 IN DESK PLAN

WALL MAPS

Wall maps in each Zone Office should show all Dealer points, both open and closed. These points should be designated by blue pencil following our standard symbol schedule.

N-25

[fol. 427] District boundaries should be shown on these wall maps with a heavy blue line.

DEALERS' TEN-DAY REPORT ON NEW AND USED CARS, FORM 414—SEE DESK PLAN OPERATIONS #402 AND #403.

This report is used to secure authentic information relative to car stocks and retail sales, so necessary for proper production control. Zones are responsible for securing complete and accurate Ten-Day Reports promptly on the dates required from *all Dealers* under their jurisdiction.

At certain times of the year when Dealers have both current and past model new cars on hand, it will be necessary for them to supply two reports, one for the current models and one for the past models. The Zones will be advised by the Central Office when this is necessary.

This report provides for all receipts, sales and transfers of new and used cars and if the calculations are carried out properly the report will balance out 100%. It is important that the Dealer be properly instructed in making out his Ten-Day Reports.

The lower portion of Form 414 provides space for listing new car purchasers and should be mailed to Organization and Analysis Department, Central Office, within five days after the close of the period which the report covers. Dealers should be instructed to use extreme care in listing purchasers so that all names and addresses are legible, and to type or print the dealership name and address in the space provided at the top of this portion of Form 414.

It is important that the following additional information is filled in completely:

1. Identification of the purchaser as Mr., Mrs., or Miss.
2. Occupation of the purchaser.
3. Street address—Some small towns may have no street names or numbers. If so, the word "None" should be placed in the street address column.
4. City or Town and State must always be shown.
5. All the remaining information must be shown—Pontiacs previously owned, Motor Serial Number and Model of car purchased and trade-in.

If the information is not complete the Zone should return the section to the dealer to be completed and returned to the Zone.

N-26

[fol. 428] It is very important that the information shown on this section of the report be complete in every detail so that mailing campaigns to owners and 2000 mile promotional material to new car purchasers can be forwarded promptly and accurately.

TEN-DAY WIRE REPORT—SEE OPERATION #407 IN DESK PLAN

CHECKING TEN-DAY REPORTS—SEE OPERATION #403 IN DESK PLAN

RECAPITULATION OF TEN-DAY REPORTS—NEW AND USED CARS, FORM 404—SEE OPERATION #401 IN DESK PLAN

REGISTRATIONS

Registration sheets reflecting the accomplishment of the Zone as a whole are also forwarded for each month, along with dealer community registrations and reflect the same information for each District in the Zone. Three complete Books are forwarded to the Zone. One is kept intact; one is broken down and each District Manager given his District and Dealer sheets; the remaining Book is broken down so that each dealer may be sent sheet(s) applying to his dealership.

COMMUNITY REGISTRATIONS, FORM 435—SEE OPERATION #493 IN DESK PLAN

DEALER TERRITORY REVISION, FORM 469—SEE OPERATION #491 IN DESK PLAN

DISTRICT REVISION SHEET, FORM 479—SEE OPERATION #492 IN DESK PLAN

SERVICE AND SERVICE PROMOTION

[fol. 429] The Desk Plan includes a detailed explanation of all Service Department forms, therefore, this section of the Manual covers matters of Policy and furnishes additional information which will materially assist Zone Personnel in handling the Service Department activities of the Zone.

POLICY & WARRANTY

MANUFACTURERS WARRANTY

The published manufacturers warranty warrants each new car including all equipment or accessories (except tires) against defect for the first 90 days or 4,000 miles driving. This means that, if the car is sold within this period, the subsequent owner or owners are entitled to this warranty protection until the expiration of the original 90 days, 4,000 mile warranty period.

The Pontiac Motor Division reserves the right to make changes in design or add any improvements on motor vehicles at any time without incurring any obligations to install same on motor vehicles and chassis previously purchased.

POLICY ON WARRANTY ADJUSTMENTS AND POLICY ADJUSTMENTS—FORM 454

This form outlines in detail conditions under which a dealer is authorized to replace defective parts and accessories on Pontiac cars sold by authorized Pontiac dealers which are in the hands of the original owners, that have failed within 12 months or 12,000 miles after delivery to the original owner without first obtaining authority from the Zone Office.

PLEASE NOTE: The manufacturers warranty is not changed by this policy. No one is authorized to make or publish any warranty on behalf of the Pontiac Motor Division other than the Manufacturers Warranty.

Revised May 1, 1958

REIMBURSEMENT FOR WARRANTY & POLICY REPAIRS

Dealers are to be reimbursed for making warranty and policy repairs at rates established and published periodically on Form 454, "Pontiac Motor Division Policy on Dealer Adjustments".

FORM 726—APPLICATION FOR ADJUSTMENT

This form is to be used by dealers in requesting credit for warranty and policy repairs. It is to be carefully checked by the Claim Administrator for correctness of Q-2 [fol. 430] part numbers and other information. When it has been determined that the AFA is correct and all details complete, the Claim Administrator will sign in the space provided to indicate that the adjustment has been approved and the copies have been sent to the Central Office so that credit may be issued to the dealer on IBM equipment.

The Zone Service Manager is to periodically review A.F.A.'s that have been approved by the Claim Administrator.

No credit will be approved if the A.F.A. is not submitted within 30 days following the date on which the work was completed.

FORM 727—REQUEST FOR AUTHORIZATION OF SPECIAL ADJUSTMENT

This form is to be used to request authorization in advance when a dealer feels it necessary to make an adjustment for which he is to be reimbursed on cars that have been in service beyond the special policy period. This is also used to request approval for replacement of certain items during the special policy period as outlined on Form 454, "Pontiac Motor Division Policy on Dealer Adjustments".

FORM 728—DEFECTIVE PARTS INFORMATION TAG

This tag properly filled out is to be attached to all defective parts by dealers, whether the parts are to be returned to the factory or held in the dealership for disposition by the Zone Personnel. It is important that this tag and no other be used for this purpose. The information on these tags is used by the factory in analyzing the cause of the failure and must be complete to be of any value.

FORM 729—RETURNED PARTS SHIPPING TAG

This tag is furnished to dealers to be used when returning defective parts to the factory. Since the destination is printed on the tag, defective parts will be delivered to the proper plant at the factory without delay. This tag is to be used for no other purpose.

DISPOSITION OF MATERIAL REPLACED IN CONNECTION WITH WARRANTY & POLICY ADJUSTMENTS

Certain classes of replaced material are useful to interested departments at the factory. This material is examined and tested to determine the cause of failure with the view of correcting the cause in future units and assemblies.

Q-3

[fol. 431] In order for dealers to know what material is to be returned, Zones will be furnished a list from time to time; and they will notify their dealers.

Material and parts not shown on the list are to be held by the dealer for inspection and disposition by a member of the Zone Personnel.

UNITED MOTORS SERVICE DIVISION

This Division provides warranty service on certain specialized automotive equipment such as Delco Remy, starting, lighting and ignition, etc. Dealers are to handle warranty transactions with them on those items not stocked by the G.M.P.D. or factory warehouses. On items stocked by G.M.P.D. or the factory, the dealer may either handle war-

ranty transactions with U.M.S. or the Pontiac Motor Division.

IMPORTANT: It is not the policy to replace complete assemblies when the replacement or repair of component parts that failed can be satisfactorily made.

OWNER SERVICE POLICY

The owner service policy is the dealer's agreement with the owner to install parts furnished under the warranty, make the 2,000 mile inspection, etc. This is in accordance with the dealer's obligation as set forth in his selling agreement.

The owner service policy is to be filled out and signed by the selling dealer. It acts as an introduction of the owner to authorized Pontiac dealers. The coupon attached entitles the owner to have his 2,000 mile inspection made by other than the selling dealer when the owner is away from home. It is the dealer's duty to see that this coupon is properly filled out and signed at the time he gives the policy to the owner.

OWNER SERVICE CREDIT FORM 117

This form is used by the Zones to issue credit to servicing dealers and debit selling dealers when the 2,000 mile inspection has been made by other than the selling dealer. Allowance for this inspection is established by the Central Office in accordance with the flat rate time necessary to perform the operations.

Q-4

[fol. 432] REPORT OF DEALERS' AVERAGE WARRANTY AND POLICY EXPENSE

Each month the Central Office Service Department will furnish a report to each zone and region showing the dealers' average warranty and policy expense figured on the basis of six months' expense divided by six months' car sales and in addition the report will show the dealers' expense trend for the previous three months. This report is to be reviewed by the Zone Manager and Zone Service

Manager to determine if certain dealers are consistently high in regard to warranty and policy expense. They are to take whatever corrective action the situation calls for.

WEEKLY OWNER RELATIONS CASES AND A.F.A. RECORD FORM 738

This form furnishes the Central Office and the management of the Zone Office information as to the number of owner relations cases and A.F.A.'s handled during the week and the balance left on hand at the end of the week.

FISHER BODY SERVICE REPRESENTATIVES

The purpose in having Fisher Body service representatives in the field is to have them act in the capacity of technical advisors to the car division personnel, assist in the training of dealer personnel, assist on product complaints where the division personnel requires assistance and furnish product reports to their home office. Fisher Body will make no authorizations to dealers or car owners, but will make recommendations to the Zone. Zones may deviate from these if in their opinion the conditions warrant a more liberal adjustment than suggested.

DISTRIBUTION OF SERVICE DEPARTMENT PUBLICATIONS

Service Department publications, with few exceptions, are listed on the "Zone Monthly Stationery Order" and "Dealers Order for Advertising, Sales Promotion, Service Material".

Distribution of Service Department publications is published in an "SER" General Letter prior to or early in each model year.

[fol. 433] INVESTIGATION AND CORRECTION OF OWNER RELATIONS CASES Q-5

The basic policy in guiding Pontiac personnel in the investigation of owner relations cases should be that mistakes must be corrected quickly and in a gracious manner, and that every effort be made to clarify misunderstandings

which have arisen between Pontiac dealers and their customers.

The investigation and adjustment with the owner should be made without prejudice and handled in a friendly and courteous manner. The objective is not only to eliminate owner dissatisfaction but to create active and enthusiastic owner good-will.

Some dealers may not have intimate knowledge of all transactions occurring in their establishments and it is only fair that they be given an opportunity to investigate and adjust any such transactions resulting in owner dissatisfaction. Furthermore, dealers have an obligation to take corrective action for Pontiac as well as for themselves as this activity is part of their selling agreement.

It is important, therefore, that Zone personnel carefully analyze every case of owner dissatisfaction to determine the extent of contact the owner has had with his dealer. Some cases may arise where the owners have made every effort to secure corrective action at the dealership, without success. *In such instances special attention should be given to the owner's problem and the services of Zone personnel utilized,* for if the owner is merely referred back to the dealer, he can only conclude that his dissatisfaction and his good-will are of no particular concern to Pontiac.

Owners sometimes express their dissatisfaction over conditions which according to Pontiac standards might be considered normal or which do not appear as a reasonable cause for owner dissatisfaction with the product or with the dealer. Most cases of this sort are due to differences of opinion as to the adjustment due the owner. It may be considered debatable how much responsibility Pontiac Motor Division may have in these cases and how much owner good-will can be gained. Nevertheless, each case should receive sufficient attention to obtain the facts and to establish the position which the Zone will take.

While in some few cases it may not be possible to satisfy the owner's requirements, the closing of the case should be handled in a tactful manner so that he will not become

antagonistic toward other products of General Motors. Since these so-called "unreasonable" cases are generally of long standing duration or include involved or unusual conditions, it is usually advisable to conclude them by utilizing Zone Personnel rather than by attempting to handle through a dealer.

Both Zone Personnel and dealers should be alert for the type of owner who is dissatisfied but who does not make his dissatisfaction known to his dealer. This situation is often disclosed by following up owners who have not returned to their dealers for normal service work. Unless this type of owner is uncovered, he is apt to remain disgruntled and become a potential liability to the dealer, Pontiac Motor Division, and other Divisions of the General Motors Corporation.

[fol. 434] HANDLING OWNER RELATIONS CASES Q-6

It is the policy of Pontiac Motor Division that each Zone Office establish an orderly and systematic procedure for the investigation and adjustment of cases of dissatisfaction received from owners of Pontiac automobiles. Each case is to be handled promptly in a manner consistent with sound business practice and within the limits of Pontiac policies, so as to assure the greatest degree of owner satisfaction.

All matters pertaining to Owner Relations Cases are to be supervised by the Zone Service Manager. In his absence, they will be handled by the Service Adjuster—however final responsibility for prompt and satisfactory handling rests entirely with the Zone Manager.

Dissatisfied owners usually bring their problems to the attention of either the Zone Office in their area of residence, the Pontiac Central Office or one of the Corporation offices. While a majority of owners write to one of the above offices, many resort to wires, phone calls, or personal contacts to bring their difficulties to the manufacturer's attention. This procedure, will deal particularly with the handling of letters of dissatisfaction however, cases originating in the form of other means of communication are handled similarly.

CENTRAL OFFICE CASES

Communications received at the Central Office which relate to service matters or express dissatisfaction with the action of Pontiac dealers in connection with service practices are classified according to the nature of dissatisfaction, registered, and acknowledged. Copies are made of the original correspondence and of the acknowledgment, and referred to the Zone Office concerned for investigation and conclusion.

Each case is followed if necessary, depending upon the urgency of the matter, until notification has been received to the effect that the transaction has been concluded.

A record is maintained of the number of days required to close the case. This closing time is computed from the date the case arrives in the Zone Office until the date it is closed.

Experience has proved that not more than ten days should be required to close the average case after its receipt at the Zone Office.

Occasionally circumstances may arise which prevent closure within 10 days. Cases may be placed on pending in those instances when the owner cannot be contacted or when the car is not made available due to owner's illness, absence on vacation or extended trip, or his requirements for use of the car prevent corrections from being performed. Time elapsed during the pending period is not included in the time required to close a case.

Q-7

[fol. 435] No case is considered closed until all the items causing the owner dissatisfaction have been adjusted or clarified with him, or until he has been directly informed that no further adjustments can be made.

A record is kept of the cases concluded to the satisfaction of the owner and of those cases closed in which the owner remains dissatisfied.

HANDLING BY THE ZONE OFFICE

Upon receipt of a case in the Zone Office, it is to be registered, carefully reviewed and full information forwarded to the dealer in whose territory the owner resides, or to the member of the zone personnel delegated to handle the case.

Whenever possible the matter should be referred to the dealer and any negotiations concerning the settlement should be discussed with him. The final proposition should be submitted to the owner by the dealer and not by zone personnel. Every effort should be made to follow this practice.

There are certain cases that necessitate immediate special investigation by a member of the Zone Personnel, but it is not the general policy to require any representative to make special trips to handle Owner Relations Cases.

Full cooperation on the part of dealers assigned to handle cases is of utmost importance. This can be encouraged by making certain that every dealer is well acquainted with Pontiac policies and that he has a complete understanding of how an owner relations case should be handled. Nevertheless, a fool-proof follow-up system is essential and is to be used when dealers fail to take proper action on a case or neglect to forward a report to the Zone Office within a specified time.

Owner Relations Case Follow-up, Form 760 or letters may be used for following dealers at specified intervals. From two to five days should be sufficient time for dealers to handle the majority of cases. Wires or phone calls may be necessary in some instances and are to be resorted to if ordinary follow-up fails to produce results.

Any tendency toward laxness in the handling given Owner Relations Cases by dealers should be investigated by a member of the zone office. The importance of handling owners difficulties should be stressed as well as the fact that he assumed the obligation of handling owners difficulties when he accepted the terms of the Pontiac Selling Agreement.

To insure that cases have been handled in the proper manner, the zone will assign the follow-up of each case to the District Manager in whose territory the owner makes his residence. He will follow-up the case with the dealer as soon as the regular course of his business permits. Indications of improper handling call for corrective action for unless this is done, the owner will in all probability write again.

Q-8

[fol. 436] Zone personnel designated to handle special cases that cannot be referred to a dealer, should also realize the importance of submitting a report to the Zone Office and here again the follow-up system will be found useful in reminding them, should they fail to keep the Zone advised.

CASES ORIGINATING AT THE CORPORATION OFFICES

Frequently, owners direct their communications to one of the Corporation offices located in New York City or Detroit. These are processed through the Service Section in Detroit and are referred directly to the Zone Office designated to handle the case.

The Service Section notifies the Central Office at Pontiac of all transactions referred to Pontiac Zone offices and these are classified "GMC" cases. Since these transactions are registered in Detroit as well as Pontiac, the Service Section is to be advised of all developments involved in such cases and a final report is to be sent that office as well as the Central Office at Pontiac.

COMMUNICATIONS DIRECTED TO OFFICIALS OF THE DIVISION

Letters that are sent by dissatisfied owners and addressed to the General Manager or General Sales Manager are so classified. These are handled by the Central Office Service Department in the same manner as other Central Office cases.

ZONE OFFICE OWNER RELATIONS CASES

Frequently owners letters are received directly at the Zone Office. These are to be handled through the dealer involved and followed up by the District Manager as is done on Central Office transactions. In the handling of Zone Office cases, it will not be necessary to report the matter to the Central Office but the Zone Service Manager should see to it that the matter has been given proper handling.

FORMS USED IN HANDLING AND REPORTING OWNER RELATIONS CASES

The following forms are used for processing, reporting and recording the cases handled.

1. Report of Handling Owner Relations Cases ..... Form 759.
2. Owner Relations Case Follow-Up ..... Form 760
3. Zone Office Record ..... Form 737
4. Zone Weekly AFA and Owner Relations Case Summary ..... Form 738

Q-9

[fol. 437] REPORT OF HANDLING OWNER RELATIONS CASES

This form is used to furnish the Central Office with a detailed report of the disposition made of the case. If used properly, it serves as a brief history of the entire transaction.

OWNER RELATIONS CASE FOLLOW-UP FORM 760

This form is to be used for following-up dealers who neglect to handle Owner Relations cases promptly. Considering the nature of the case, the follow-up date should be established at the time the case is forwarded to the dealer. Each case is to be followed up not later than the fifth day after it was originally sent to the dealer.

ZONE OFFICE RECORD

This form is used for maintaining a record of the cases handled in the zone office. It is important that each case be recorded immediately upon receipt in the Zone Office and an accurate account kept of its processing and final closure.

WEEKLY AFA AND ORC SUMMARY

The Owner Relations Case Section of this report provides the Central Office with a record of the Zones ORC activity and from this information other composite reports are compiled on a National basis.

CENTRAL OFFICE RECORDS

The Central Office at Pontiac will maintain a numerical record of Owner Relations Cases by zones and will report at the end of each month as follows:

a. Zone Office Summary. Each zone will be furnished a summary of all outstanding cases as of the close of the month. Those transactions over 20 days old will be so designated. Cases that have been placed on pending, but not definitely closed, are also listed on the summary.

b. The zone offices will be furnished a report of owner relations cases on a national basis as soon after the close of the month as possible. This report will show a comparison of all zones as regards the number of cases handled as well as the average days handling required.

[fol. 438] SERVICE PROMOTION Q-10

ESTABLISHING DEALERS' FLAT RATE MULTIPLE

When signing new dealers or advising present dealers on establishing or changing an authorized hourly flat rate multiple, following is a procedure to be followed by the District Manager or other authorized members of the zone personnel.

Determine the hourly rate being used by competitive dealers in pricing warranty and policy or charges to customers: the dealer's rate must be competitive in order for him to get his share of customer labor sales.

If the hourly labor customer rate is too low, the dealer will be unable to pay wages that will attract good mechanics to his shop. If it is too high, it will drive service customers away and decrease the over-all profit from his business.

The local prevailing mechanical wage rate should be considered, as it will be necessary to meet the competitive wage scale in order to obtain and keep first-class mechanics, both body and chassis.

When requests are received from established dealers for an increase in flat rate multiple, dealers' labor costs should be reviewed and considered before a change is approved. The hourly rate increase request data sheet should also be filled out and this, together with the above information, will usually show whether or not a change in the dealer's rate is justified.

Any request for an increase to a rate higher than $4.00 per hour is to be submitted to the Central Office Service Department for review before approval is given.

FLAT RATE MANUAL

The Pontiac Motor Division advocates the use of flat rate charges in the sale of service labor to customers. Flat Rate Manuals showing time allowances for performing labor operations are made up by Central Office. The service charge is then the product of the Flat Rate Time Allowance and the dealer Flat Rate Multiple. This service charge can be noted in the space designated for "Price" on each major operation.

One copy of the Flat Rate Manual will be supplied to each dealer. Any additional copies required by a dealer may be supplied on a no-charge basis.

The zone office should maintain a small stock of all Flat Rate Manuals which can be ordered on the Zone Monthly Stationery Inventory and order blank.

Q-11

[fol. 439] SHIPMENT OF NEW MODEL SPECIAL TOOLS TO DEALERS

At the beginning of each new model year, special tools are developed that are necessary to make proper service repairs to that particular model.

Orders will be taken and submitted on blanks furnished by the Central Office. If the dealer is not on C.O.D. the tools will be shipped direct from the supplier and charged to the dealer's open account with Pontiac. If the dealer is on C.O.D. the tools will be shipped on that basis. Zones must indicate on the order blank whether the tools are going to be shipped open account or C.O.D.

This only applies to new model special tools; all other tools and equipment are to be purchased direct from a supplier and the billing will not be handled through Pontiac Accounts Receivable.

REPURCHASE SPECIAL TOOLS WHEN DEALER SELLING AGREEMENT IS TERMINATED

In accordance with information contained in the Pontiac Dealer Selling Agreement, in the event of dealer termination, if dealer desires to sell same, Pontiac will purchase all the special tools of a type recommended by Pontiac and designed specifically for service of Pontiac Motor vehicles, which were purchased by dealer during the three-year period immediately preceding termination. See Page N-48-49 of the Zone Office Manual.

As a guide, the following suggested procedure is to be used in determining repurchase prices:

1. Current model tools, new and unused—dealer original cost.
2. Past models, new and unused—dealer cost less 25% to 50%.
3. All models, slightly used—dealer cost less 25% to 50%.

4. Present and past models, used tools but salable—price to be mutually agreed upon by Zone Service Manager and dealer.

5. Damaged, unsalable, or incomplete tools should not be repurchased.

6. Any disagreement as to the percentages set forth above, zone and dealer shall then select a third party who shall set the price.

Be sure to obtain a clear title or firm bill of sale on tools repurchased and immediately upon repurchase of tools, a zone sundry credit should be issued for the repurchased tools, listing the value of each tool individually. A permanent zone inventory record should be set up and maintained until the tools are disposed of. Repurchased tools will be stored in the zone office or a satisfactory storage space for protection and safety.

Q-12

[fol. 440] It will be the responsibility of the Zone Service Manager to handle the repurchase of all tools and follow this policy and procedure and maintain records.

PONTIAC SERVICE CRAFTSMAN ACTIVITY

The Pontiac Service Craftsman Activity was started in 1936 for the training of Pontiac Dealer Service Personnel to enable them to do a better job of servicing Pontiac cars. Through this training program not only better service work resulted but also better owner goodwill for our product was obtained.

This activity consists of, first, the attendance of the dealer service personnel in the Craftsman Training Schools and, second, the correct answering of examinations of the true and false type which are made up in the Central Office and forwarded to the Craftsmen from the zone offices. Upon the successful completion of these two requirements suitable awards are furnished. A Service Craftsman Card showing the number of years each man has been a Craftsman is furnished at the end of each year of successful completion of this activity.

A Dealer Plaque which also has the Craftsman Crest engraved on it is furnished to all dealers who have craftsmen in their employ, and provision is made for attaching to this plaque the names of these craftsmen.

During the period of December 31, 1941 to December 31, 1945, this activity was discontinued and when reinstated in January of 1946 all craftsmen who either stayed with the Pontiac dealer for the duration or were in the Armed Forces and returned to the Pontiac dealer received a duration award of a leather billfold with the craftsman crest. During this period the craftsmen neither gained nor lost time in the activity.

For detailed procedure refer to the Desk Plan, Operations 831 through 836.

SERVICE PROMOTION PROGRAM

Pontiac's Service Promotion program can be divided into two classifications: (1) Dealer Promotion Activities, which encourage the dealer and his staff to maintain a good service operation, and (2) Service Advertising Activities which provide the dealer with various selling aids to bring Pontiac owners into his dealership to buy service.

It is the aim of these activities, not only to help the dealer operate a profitable service department by having a satisfactory number of owners returning regularly for service, but to assist him in selling service in a manner which will be to his benefit and to Pontiac's over a period of years.

Q-13

[fol. 441] DEALER PROMOTION ACTIVITIES

Service Management Club Meetings.

Zone Managers and Zone Service Managers hold a series of these meetings in key cities from three to five times per year, using program material (charts, films, etc.) provided by the Central Office Service Department.

Dealers are invited to these evening meetings, together with their Service Supervisory staffs—Service Managers,

Service Salesmen, Parts Managers and Exclusive Shop Foremen. The meeting programs cover current service management problems.

Outstanding Owner Service Awards.

Dealers' Service Supervisory personnel are given awards under this program for meeting certain requirements which measure the effectiveness of the service operation. Requirements (or objectives) are set on a national basis by the Central Office Service Department and are broken down for each dealership by Zones.

Dealers' Service Managers, Service Salesmen and Exclusive Shop Foremen are eligible to receive a gold Outstanding Owner Service pin denoting the number of years person has fulfilled the requirements.

Requirements for each year are announced in SER bulletins from Pontiac. Zones use the Outstanding Owner Service Rating Form 703, as described in Desk Plan Operation 813, mailing this report monthly to Pontiac Central Office listing their performance against objectives.

SERVICE ADVERTISING ACTIVITIES

Owner Follow-Up System.

The follow-up system provides dealers with a systematic plan for mail and personal follow-up of customers who have not returned for service from 30 to 120 days. The system also allows dealers and zones to compare the number of active service customers with total Pontiac owner potential, an important measuring stick of the dealer's service operation. Any good follow-up system is recommended.

Dealers are to send the owner follow-up system report, Form 756 (Desk Plan Operation 814) to zone offices monthly, and zones send their monthly reports to Pontiac on the Outstanding Owner Service Rating Form 703, as described in Desk Plan Operation 813.

Q-14

[fol. 442] Direct Mail.

Pontiac dealers are primarily interested in establishing regular service contacts with Pontiac owners (See Dealer

Selling Agreement for dealer's obligation). Because of this, service mailing pieces offer an excellent means of carrying service advertising messages direct to the motorists dealers wish to contact.

Portfolios containing sample direct mail pieces are provided to all zones so that zone personnel can obtain orders from dealers and forward them to the Central Office Service Department. Most participating dealers make one mailing a month to their owners. A wide variety of mailing pieces is offered on each campaign to permit the dealer to advertise the particular department in his service operation which he wishes to feature during any month.

Further details on each direct mail campaign are carried in our SER bulletins.

Newspaper Mats.

A series of newspaper advertisements are developed from each service direct mail campaign. Proofs of these are provided for dealers, and the mats are available from Pontiac "no charge" on request.

Dealers may insert the ads in their local newspapers, at their own expense, as a means of tying in with their service mailings to owners.

Service Department Posters.

A complete service poster campaign is released each year to provide a selling atmosphere in the Service Department. These posters are likewise developed from current direct mail pieces, thus allowing dealers to round out their service advertising programs with point-of-sale displays. Poster orders are taken by zones and forwarded to Central Office.

Lubrication Plan Booklets.

Two types of Lubrication Plan Booklets are made available to dealers. One contains a number of coupons, each good for one lubrication, and is sold to the owner; the other is presented to the customer free of charge, and contains a series of coupons, each of which offers a discount on a lubrication job. Zones or dealers may order these items direct from the supplier.

[fol. 443]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

PLAINTIFF'S EXHIBIT NO. 4

CERTAIN CHEVROLET JOB CLASSIFICATIONS

[fol. 444]

CERTAIN JOB CLASSIFICATION DESCRIPTIONS AS CONTAINED IN THE JOB CLASSIFICATION MANUAL APPLICABLE TO THE CHEVROLET DIVSION

10-S-4 ZONE MANAGER

The Zone Manager is in complete charge of Zone Sales, Service and Parts & Accessories Merchandising and Warehousing Departments. He is responsible to the Region Manager for the sales of its products. He must possess a broad knowledge of the business—both from a selling and good business practice standpoint. He must have the ability to read financial statements and make recommendations for improvement of business and profits where necessary. He must qualify in business relationships to be able to hold the respect of the Zone and Dealer organization. (All Zones)

9-S-3 ASSISTANT ZONE MANAGER

Assistant Zone Manager is responsible for the overall operation of the Zone, working under the direction of the Zone Manager. His responsibilities also embrace the training and direction of District Managers and Department heads. and for development of the business, handling of dealers and all other phases of the Zone operation and should be qualified to read and explain the financial statements and make recommendations from these reports when required. (All Zones)

7-C-30 BUSINESS MANAGEMENT MANAGER (ZONE)

His responsibility is to assist dealers in developing more efficient management in all departments of their business. His duties include analyzing dealer operating results from the standpoint of the various operating and profit factors and capital relationships; and assisting dealers to interpret these analyses and formulate plans and institute controls so that a satisfactory return on their investment will result.

7-S-1 PARTS AND SERVICE MANAGER (ZONE)

His responsibility is for the effectiveness of the service function in the zone area. His duties include the hiring, training, and supervision of Zone Service representatives; the education of dealers' service organizations in approved methods through schools and other contacts; promotion of [fol. 445] divisional policies as to methods of obtaining customer business and service; cooperating with the dealer in the handling of difficult customer complaints which the dealer has been unable to satisfy. The qualifications of this man are a thorough mechanical training, ability to supervise men, and personality to meet and talk with the public.

7-S-42 ZONE DISTRIBUTION MANAGER

His responsibility is to maintain the most effective distribution on orders from dealers for cars and trucks in relation to production.

6-S-71 DISTRICT MANAGER

His responsibility is to maintain the required dealer organization in the territory assigned to him and to promote the business of the Division in this territory. In carrying out this responsibility, he is to contact assigned dealers or branches in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the Divisional sales policies, promotional, and training plans to improve the selling ability of the sales

organization. His duties include contacting assigned dealers or branches at designated intervals and securing orders for the Division's products; to assist the outlet's Sales Manager in organizing and training its sales force; to assist in controlling the used product inventory; to advise outlets of changes in Divisional policies. Passes on to dealers any knowledge gained of competitive products and is responsible for closing open points.

6-S-72 SERVICE AND/OR PARTS REPRESENTATIVE

Participates in the duties and responsibilities of Service, Parts and Service, or Service and Mechanical Manager (Zone or Branch) (7-S-1), and works under his supervision. His duties include the education of dealers' and/or distributors' parts and service personnel in approved methods through schools and other contacts; promotion of Divisional policies as to methods of obtaining customer business and service; co-operating with the dealer and/or distributor in the handling of difficult customer complaints which the dealer and/or distributor has been unable to satisfy. The qualifications of this man are a thorough product and/or mechanical training and also personality to meet and talk with the public.

[fol. 446]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THURSTON COUNTY

EXCERPTS FROM PLAINTIFF'S EXHIBIT NO. 5

ZONE OFFICE MANUAL

BUSINESS MANAGEMENT STANDARD PROCEDURES

DEALER FINANCIAL STATEMENTS

1. STANDARD DEALER FINANCIAL STATEMENT—DSA-630 (1-57)

Careful consideration has been given to the matter of coordinating all necessary reports of the Business Management Department with the Financial Statement. The Standard Dealer Financial Statement, DSA-630 (1-57), will be the basis from which all of the information will be obtained to promptly and efficiently issue the reports of the Business Management Department.

Revisions have been made in the Financial Statement for 1957, some of which affect the chart of accounts. The DSA-630 (1-57) should be used by all dealers beginning with the month of January 1957 operations.

We should endeavor to secure a Financial Statement from all dealers each month compiled on Form DSA-630 (1-57). The Statements submitted by the dealers should be in duplicate and should be received in the Zone Office as early each month as possible. Every effort should be made to encourage dealers to forward copies of their Statements as soon as completed. This will greatly assist the Business Management Clerk in processing the Statements toward preparation of composites.

Inasmuch as we are requesting dealers to furnish us with two copies of the Financial Statement, Central Office will furnish each dealer with the necessary blanks upon which to submit the extra copy each month. Financial Statement forms will, therefore, be forwarded gratis in January of each year to each Zone in sufficient quantities to permit the Zone to forward twelve copies to each dealer from whom statements will be received.

It is important that all dealers use the latest form of Financial Statement so that the information submitted will be uniform and our various reports may be readily compiled. The Zone Business Manager should, therefore, request each dealer to order a supply of the latest revised Financial Statement on which to submit his reports.

Dealers should scrap all obsolete Financial Statement forms in order to avoid confusion and the possibility of information being submitted to us incorrectly.

2. FORWARDING STATEMENTS TO GENERAL MOTORS CORPORATION

All Financial Statements are to be checked for accuracy immediately upon receipt and one copy set aside to be forwarded to:

Dealer Business Management Department
Sales Section—13-157
General Motors Building
Detroit 2, Michigan

Revised—January 1, 1958

Page 5

[fol. 447] The only exception to this is that Statements covering Chevrolet dualed dealers operating under the Business Management control of another Division should not be forwarded since they are forwarded by the Division having control.

A rubber stamp impression reading "CHEV. ZONE NO.....DATE P'MARK....DATE REC'D....PLAN. POT...." should be placed at the *top of Page 1* on each Financial Statement forwarded to Detroit. Stamps have been supplied by Central Office to assure uniformity in arrangement and appearance when the Statements are received. The information to be filled in for planning potential is the established planning potential for the dealer's area of responsibility.

Financial Statements should not be accumulated but should be *forwarded daily.* In those cases where a reporting dealership does not submit a monthly Financial Statement in duplicate, the Zone should arrange for a duplicate copy to be forwarded to the Corporation.

3. FISCAL-YEAR FINANCIAL STATEMENTS

With the advent of the new Dealer Operating Record—GSD-634, in 1949 and the Confidential Averages, GSD-634-B, the standardization of all Financial Statements on a calendar-year basis becomes quite important.

The conversion of fiscal-year Statements, either by the dealer accountant or by Chevrolet, naturally involves considerable time and could cause an appreciable delay in the preparation of both Zone and National Composites, as well as the Confidential Averages. There should be a constant follow-up of all fiscal-year operations to solicit the dealer's willingness to convert to a calendar-year basis.

4. RECORD OF FINANCIAL STATEMENTS RECEIVED—GSD 684-A (Rev. 7-57)

Form GSD 684-A, "Financial Statements Received", is to be used by the Zone for recording the date of receipt each month of dealership Financial Statements. In addition, this record now provides a separate column by month for the check-off of Financial Statement copies forwarded by the Zone to the Sales Section of the Corporation.

At the beginning of each year a GSD-684-A for each District is to be prepared on which will be listed the dealership name, location, and planning potential for every dealership in the District operating under Chevrolet Business Management control. Line spacing should be provided for the subsequent listing of new dealerships created as a result of the closing of Open Points, subsequent replacements, etc.

As the Financial Statements are received from a dealership, insert the date of receipt on the line opposite the dealership name and location in the "Rec." column for the month represented by the Financial Statement. The date should be entered in "black" if the Financial Statement is received on or before the 10th of the month and in "red" if received after the 10th.

As the duplicate copy of dealership Financial Statements are mailed to the Sales Section of the Corporation, a check

mark (or date) is to be inserted in the proper month column headed "S/S". A visual record is thus provided for determining those dealerships from whom a duplicate statement is to be secured or be prepared by the Zone for forwarding to the Corporation.

Revised—July 1, 1957

Page 6

[fol. 448] A recapitulation of the dates on which dealer Statements are received in the Zone Office is to be shown each month in the "Financial Statements Received" section of the Total Zone Composite. This information will be secured from the record of "Financial Statements Received" (GSD-684A).

5. FILING STATEMENTS.

After all needed information is taken from the Statements they should be placed in special folders with all previous Statements received from each individual dealer and filed in a legal-size steel file cabinet with lock. Because of the confidential nature of Statement information they should be kept under lock and key at all times.

A special Financial Statement Folder, GSD-100B, has been made available for this purpose and is carried in stock in the Central Office Stationery Department. A standardized type of label to be used with this Statement Folder is also made available and is likewise carried in the Central Office Stationery Department under Stock No. L-22, Crimson Strip.

6. RETENTION OF DEALER FINANCIAL STATEMENTS

The following ruling has been made on the retention by Zones of "Dealer Financial Statements."

A. *Year-End Financial Statements* will be retained for all dealers operating on a calendar year basis, for all years for which Statements have been and are received.

B. *Fiscal Year-End* and *December 31st Financial Statements* will be retained for all dealers submitting Statements on other than the calendar year basis, for all years for which Statements have been and are received.

C. *Monthly Financial Statements* except as set forth in "A" and "B" above for all dealers will be retained for five preceding years.

D. At the beginning of each year the Monthly Financial Statements (except "A", "B", and "C" above) may be destroyed.

When Financial Statements are destroyed we suggest you see to it that they are completely burned, thereby keeping our agreement with dealers that these Statements will be held in complete confidence.

Revised—January 1958

[fol. 449] Page 75

DEALER CAPITAL STANDARD PROGRAM (GSD-211, 211A, and 211W)

Chevrolet has administered a Minimum Capital Standard Program since July 1947. Revisions to this program have been made on several occasions. A basic change was made on November 1, 1955 which eliminated the requirement for a stated amount of Owned Net Worth and which revised certain of the formulas for the determination of an Owned Net Working Capital Standard.

Effective January 1, 1957 certain minor additional revisions have been made to the formulas as outlined in the paragraph below headed "GSD-211W (1-57) Minimum Capital Standard Worksheet."

The following provisions will apply with regard to the Capital Standard Program.

GENERAL

Every dealer will execute a Minimum Capital Standard Agreement concurrently with the execution of a Chevrolet Selling Agreement. Two types of Minimum Capital Standard Agreements are provided.

1. *GSD-211A* This agreement will be executed with, (a) all new dealers where the actual starting capital (as approved by Central Office) is less than the established minimum standard for the new dealership operation; (b) deficient dealers presently operating under a GSD-211A where a revision is to be made to the minimum standard and the attainment date for providing the minimum capital has not been reached; (c) dealers presently operating under a GSD-211, where an Owned Net Working Capital Standard revision results in an Owned Net Working Capital deficiency and the dealer is unable to invest the additional capital required to meet the revised standard; (d) dealers presently operating under a GSD-211A where the attainment date has been reached, an Owned Net Working Capital deficiency still exists, the dealer has complied with the provisions of his Agreement up to the attainment date, has no additional funds to invest, and only lack of sufficient profits is responsible for the failure to overcome the deficiency.

2. *GSD-211* This agreement will be executed with all dealers other than those outlined above.

GSD-211W "MINIMUM CAPITAL STANDARD AGREEMENT WORKSHEET"

This form will be used to develop new or to revise existing Minimum Owned Net Working Capital Standards for *all* dealers under Chevrolet Business Management Control. It is to be used also for the determination, on an estimated basis of the Minimum Owned Net Working Capital requirements for proposed new dealer appointments.

This form provides for the following formulas in the determination of Minimum Owned Net Working Capital Standards.

1. CASH
   One month's average of Total Expenses.

2. RECEIVABLES
One month's average of Total Notes and Accounts Receivable investment reduced by the average month's Memo New Car accounts included in Accounts Receivable (Fleet and governmental).

Revised—January 1958

[fol. 450] Page 76

3. MISCELLANEOUS INVENTORIES (Except Farm Implements and Parts, Appliances, Hardware and other non-franchise items.)

One average month's Miscellaneous Inventory investment.

3A. OTHER MISCELLANEOUS INVENTORIES (Farm Implements and Parts, Appliances, Hardware, etc.)

One average month's Cost of Sales.

4. PREPAID EXPENSES
One average month's Prepaid Expense Inventory.

5. PARTS
Two months' supply based upon average month Cost of Sales.

6. ACCESSORIES
One month's supply of Accessories other than with New Cars, based on average month Cost of Sales.

7. NEW AND COMPANY CARS
The dealership's equity in New and Company Cars will be calculated on the basis of 20% of the average new unit cost (including Freight and Handling, Accessories with New Cars, and Special Bodies and Equipment) applied to a specified unit inventory. There will be no change in the method used to determine the specified number of units.

8. USED CARS
One average month's dollar inventory.

While a full 12 consecutive month's of dealership operating experience is necessary and should be used in the develop-

ment of minimum capital requirement, it is recognized that in special situations (such as new dealer appointments) it may be necessary to use less than a full year's operating experience. When a special situation exists and can be justified on the basis of sound business judgment, therefore, less than 12 consecutive month's operating experience may be used. In all other cases 12 consecutive month's operating experience must be used.

NEWLY APPOINTED DEALERS—PROPOSED NEW DEALERS

The Zone will establish a Minimum Owned Net Working Capital Requirement for new dealers. A GSD-211W, Minimum Capital Standard—Worksheet, is to be completed on an "Estimated" basis as indicated in the following paragraph and the minimum standard as developed is to be incorporated in the GSD-211 or 211A, Minimum Capital Standard Agreement for the new dealers.

The amount to be established will be based upon the requirement for the selling dealer and adjusted to the anticipated requirement for the purchasing or new dealer. If a Selling Agreement is to be signed for a new location or to close on open point, the amount to be established for Owned Net Working Capital will be based upon the experience of other dealerships of similar size planning potential and operation. In no case shall the Owned Net Working Capital be less than $7,500 plus $75 per car of Fixed Planning Potential.

Since approval to enter into a Selling Agreement with a new dealer is contingent upon (among other considerations) the initial amount of Capital to be employed, versus the minimum amount necessary for a complete and normal operation, it therefore becomes necessary in the case of *proposed* new dealers to develop the minimum standard

(on the GSD-211W) prior to the actual execution of the Selling Agreement and Minimum Capital Standard Agreement. In these cases, the minimum amount of Owned Net Working Capital as developed on the GSD-211W becomes

this "proposed" Owned Net Working Capital Standard and if approved is incorporated into the Minimum Capital Standard Agreement to be executed with the new dealer.

REVIEW AND REVISIONS

Each Zone will review annually the actual operating experience, of each dealer in the Zone under Chevrolet Business Management Control for the purpose of determining the need for a revision of the existing Owned Net Working Capital Standard. Where the need for revision is indicated by the GSD-211W the dealer is to be contacted and a new agreement—GSD-211 or GSD-211A signed. Conversely, each dealer who specifically requests a revision of an existing standard is entitled to a review of his present standard and the GSD-211W will be the basis for any decision to increase or decrease an existing standard.

Where a GSD-211A is executed, the following provisions will apply (except for Motors Holding Dealers):

1. The per cent of agreed profit retention will be not less than 50%.
2. The attainment date will be the earliest possible, with a maximum of 12 months, and in no case beyond the expiration date of the current Selling Agreement.
3. Where a revised GSD-211A is to be executed with a deficient dealer the agreed attainment date will be the same as that which appears in the current agreement, except when the Owned Net Working Capital Standard is increased and the dealer is unable to invest the additional capital necessary to meet the revised standard before the attainment date. Then a new attainment date may be used, not to exceed 12 months or the expiration of the current Selling Agreement. When it becomes necessary, because of the execution of a new Selling Agreement, to execute a new GSD-211A with a dealer currently operating under a GSD-211A, the agreed Minimum Owned Net Working Capital standard, per cent of profit retention, and attainment date will be the same as that which appears in the current Capital Standard Agree-

ment, unless the agreed attainment date has passed, in which event a new attainment date will be established, not to exceed one year and in no case beyond the expiration of the new Selling Agreement. This exception to the policy that extensions of attainment date is confined to "compliance" dealers is made in the interest of being practical, since the provision of an expired attainment date in the new GSD-211A would be inconsistent.

Revised—August 1957

GSD 211
PRINTED IN U.S.A. 3-58

GENERAL MOTORS
DEALERS CAPITAL STANDARD PROGRAM

CHEVROLET DEALER
MINIMUM CAPITAL STANDARD AGREEMENT

DEALER.....ZONE.....

STREET ADDRESS.....

CITY.....STATE.....

In accordance with the provisions of Section 12 of the current Chevrolet Dealer Selling Agreement dated....., between Chevrolet Motor Division and the undersigned Dealer, Chevrolet has established the amount $.....as the minimum owned net working capital required by Dealer to handle properly the business to be conducted by Dealer.

Dealer agrees to establish its owned net working capital in an amount of not less then $..... and to maintain such amount as a minimum at all times.

Negotiations to increase or decrease the above minimum owned net working capital amount, due to changed conditions, will be undertaken by the parties hereto upon the written request of either party.

In Witness Whereof, the parties hereto have executed this minimum capital standard agreement this.....day of....., 19.....

Dealer

.....
(Firm Name)

By.....
Officer of Firm and Title

By.....
Officer of Firm and Title

Witness:..... .....

CHEVROLET MOTOR DIVISION
General Motors Corporation

W E Fish
.....
General Sales Manager

.....
Zone Manager

GSD 211A
PRINTED IN U.S.A. 3-60

GENERAL MOTORS
DEALERS CAPITAL STANDARD PROGRAM

CHEVROLET DEALER
MINIMUM CAPITAL STANDARD AGREEMENT

DEALER..... ZONE.....

STREET ADDRESS.....

CITY..... STATE.....

In accordance with the provisions of Section 12 of the current Chevrolet Dealer Selling Agreement dated....., between Chevrolet Motor Division and the undersigned Dealer, Chevrolet has established the amount of $..... as the minimum owned net working capital required by Dealer to handle properly the business to be conducted by Dealer.

Dealer agrees (1) to establish an initial owned net working capital in the amount of $.....; (2) to retain in the dealership business.....% of the net profits (after income taxes applicable to the business) until such time as the actual owned net working capital equals or exceeds the minimum owned net working capital of $.....; and (3) thereafter to maintain such amount as a minimum at all times; provided, nevertheless, that the minimum owned net working capital of $.....shall in any event be supplied by Dealer on or before .....19.....; or such further date as shall be agreed upon in writing by the parties hereto.

Negotiations to increase or decrease the above minimum owned net working capital amount, due to changed conditions, will be undertaken by the parties hereto upon the written request of either party.

In Witness Whereof, the parties hereto have executed this minimum capital standard agreement this.....day of....., 19.....

Dealer

.....
(Firm Name)

By.....
Officer of Firm and Title

By.....
Officer of Firm and Title

Witness.....

CHEVROLET MOTOR DIVISION
General Motors Corporation

W E Fish
.....
General Sales Manager

.....
Zone Manager

[fol. 453]

[fol. 454] Page 90

Accumulation of Awards or Prizes —GSD-158 (Continued)

GENERAL INFORMATION

A. *Awards and Prizes*

1. Definition

For the purposes of this requirement, "Awards and Prizes" are construed to mean anything having a tangible value, such as cash, bonds, merchandise, trips, etc., and include district quiz prizes, campaign prizes, and all tangible awards made for any activity by any department of Chevrolet.

Pay off parties held at a central point within a Zone or Region for winners in such Zone or Region are not generally considered as tangible awards to the extent of the transportation, refreshments, food, entertainment, and inexpensive favors; but any door prize or other awards of substantial value given away in connection with such parties are considered as tangible awards.

In those cases where doubt exists as to whether or not an award and/or prize is considered "tangible", full details should be reported to the Central Office Business Management Department for a ruling.

2. Value of Award and/or Prize

For GSD-158 reporting purposes, the value of an award and/or prize is to be its cost to Chevrolet Motor Division except that in those cases where the award and/or prize is a product of General Motors Corporation or one of its Divisions, and not purchased from an outside source, in which event the Chevrolet Central Office Department making the award will advise Zones of the award cost to Chevrolet and/or formula for its determination to be used in posting to the GSD-158 card.

Under no circumstances should any Chevrolet wholesale man attempt to place any other valuation on such awards and/or prizes.

Likewise, such values placed on an award or prize may not necessarily be the amount which is includable in the recipients taxable income. The question of valuation for tax purposes is one which can only be handled by the recipient and the taxing authorities.

B. *Special Situations*

WHERE THE AWARD OR PRIZE IS MADE FROM A COMMON FUND TO WHICH BOTH CHEVROLET MOTOR DIVISION AND DEALERS CONTRIBUTED.

In the event Chevrolet Motor Division and its dealers jointly contribute to a Common Fund out of which award and/or prizes are made, the amounts to be recorded on GSD-158 cards are determined as follows:

Issued—May 1958

[fol. 455] Page 91

1. If each participating dealer *is not assured* that any awards and/or prizes will be made to his personnel, record the entire cost of the award and/or prize.

   (Awards or Prizes made under this situation will be reported by Chevrolet, if the total of all awards or prizes for which Chevrolet has the responsibility of reporting equals $600 or more. Therefore the dealer does not have the responsibility of including awards or prizes made under this situation on the Withholding Tax Statement, Form W-2, for the individual.)

2. If each participating dealer *is assured* that all or a part of his contribution will be awarded by a Committee and/or Chevrolet to personnel in his dealership to be designated by him as a recipient of an award and/or prize, record that portion of the award and/or prize contributed by Chevrolet.

   (As only Chevrolet's portion of awards or prizes made under this situation are recorded on the GSD-158 cards, the dealer is responsible for conformity with Internal Revenue Service regulations for the filing of Withholding Tax Statement Form, W-2, for that portion of the award or prize represented by his contribution.)

REVISED ISSUED

GSD-158 (BM) — 2 YEAR RETENTION
(5-58)

ACCUMULATION OF AWARDS OR PRIZES

(SEE INSTRUCTIONS IN BUSINESS MANAGEMENT STANDARD PROCEDURES MANUAL)

YEAR _____

NAME _____ (Full First Name)

ZONE _____

HOME ADDRESS _____

SALESMAN ☐

DEALERSHIP NAME _____

SALES MANAGER ☐

ADDRESS _____

DEALER ☐

OTHER ☐

DATE OF AWARD PAYMENT	SOURCE OF AWARD (√)			TYPE OF AWARD OR PRIZE (√)					AMOUNT (Cost)
	Nat'L.	Reg.	Zone	Cash	Bond	Mdse.	Trip	Other (Explain)	

[fol. 457]

N-19 (Rev.)
2-1-56

CAR DISTRIBUTION STANDARD PRACTICE

GSD 549—ESTIMATE OF SALES AND REQUIREMENTS—PASSENGER

This form is of utmost importance to our operation and when properly compiled has tremendous value to the Zone Office in establishing dealers' tentative allotments and setting or adjusting future Zone schedules by models and total. Each District Manager should complete this form, in duplicate, with every dealer during the regular projection trip each month in the following manner:

These projection trips are to be started on the 1st and completed on the 10th of each month. The first operation is to complete that portion on the right side of the form "Passenger Car Projection in Total Only".

The first section covers the dealer's best estimate of his operation for the month in which the contact is being made. Should that be the month of April, then the following section is May, the next is June, and the last section is July, which then would bring us to "Estimated Stock" on August 1st.

In this example, the stock on April 1st is a known factor and can be inserted immediately. Then complete the month of April on shipments available and sales to arrive at stock on May 1st. Some Zones may elect to work on and complete one month at a time while others may prefer to concentrate on desired stock the first of each month—June, July and August, then on Estimated Sales for May, June and July. Either way is satisfactory and is left to the discretion of the Zone Management.

The next step, after the Projection in Total is completed, is to transfer the Estimated Requirements total opposite the figure "1" to the GSD 799—Dealer Car Order Form—left hand column and in the space provided to the left of "Model Total". Then show the Estimated Requirements totals opposite the figures "2" and "3" in the space on the "Grand Total" line to the left and center of the GSD 549 form opposite the figures "2" and "3" respectively. Indi-

cate the months in the spaces provided at the upper extreme left hand column and upper center column. In this example, the month of June is shown in the left hand column to correspond to the figure "2" and July in the center column to correspond to the figure "3".

At this point, GSD 799—Dealer Car Order Form, should be completed and will be covered in detail in another section of the Standard Practice.

Model breakdown of the Estimated Requirements totals, and indicating anticipated Optional Equipment Requirements, is the next and a very important step toward the completion of this form. The GSD 210—Dealer Record-Passenger Stock and Sales and of Optional Equipment Sales—should materially assist the dealer in this model breakdown and equipment requirements.

Dealers should give serious thought to their future estimated sales and desired stock on the first of each month, the model breakdowns and optional equipment requirements. Such factors as seasonal trends, past performance, current local market conditions, individual dealer's Price Class position and merchandising plans should all be considered in making these projections.

N-19-A (Rev.)
2-1-56

[fol. 458] District Managers and dealers must realize the estimated requirements as indicated for the second and third months are actually used for the placing of orders with our suppliers for specific model material or to change a previously placed order. Basically, estimated requirements can be construed as a purchase order.

A copy of the projection should be left with the dealer and the original mailed to the Zone Distribution Manager, at the conclusion of each day's contacts. This will enable the Distribution Office to recap the forms daily while the projection trip is in progress.

[fol. 459a]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

DEFENDANT'S EXHIBIT No. 8

(See opposite) ☞

DIRECT DEALER SELLING AGREEMENT

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

Form No. GSD-201-B-Chevrolet-54
U.S.A. 6M

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

Direct Dealer

Selling Agreement

THIS AGREEMENT, made this _____ day of _____, A. D. 19____ by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Seller, and

_____

an { individual / co-partnership of / corporation } _____
City County State

hereinafter called Dealer,

WITNESSETH:

IN CONSIDERATION of the promises hereinafter made by the parties to each other, it is agreed as follows:

FIRST: Subject to the terms and conditions hereof, Seller will sell and Dealer will buy Chevrolet motor vehicles and chassis and Dealer shall have the obligation to develop properly the sale thereof particularly in the following area:

SECOND: The terms and conditions set forth in the attached "Terms and Conditions—Direct Dealer", bearing Form No. GSD-202-Chevrolet-51 and Identification No. 54- are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

THIRD: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of

(jointly), the Dealer, or partner(s) in the dealership, or representative(s) of the Dealer who actively and substantially participate(s) in the ownership and/or operation of the dealership. The individual or individuals designated shall be responsible for any act or omission of any of Dealer's agents or employes which may be contrary to the purposes and objectives of this Agreement or the obligations of Dealer hereunder. Dealer shall not transfer or assign nor attempt to transfer this Agreement or any right or obligation hereunder. Dealer shall not make nor suffer to be made any change in the ownership, financial interests or active management of Dealer without the prior written approval of Seller.

FOURTH: This Agreement shall continue in force and govern all relations and transactions between the parties for a term commencing on the stated date of execution hereof and expiring October 31, 1955. At the end of the stipulated term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided in Section 25.

[fol. 460]

460

345

[fol. 461]

FIFTH: This Agreement is not valid until and unless it bears the facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager, or Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

CHEVROLET MOTOR DIVISION
General Motors Corporation

W E Fisher
General Sales Manager

Dealer _____
Firm Name

By _____
Officer of firm and Title

By _____
Zone Manager

By _____
Officer of firm and Title

Town and State _____

Witness: _____

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.)

If Dealer is a corporation, show State in which incorporated: _____

346

INDEX

	Page
Accessories	8
Accounts and Records	10
Uniform Accounting System	10
Examination of Accounts and Records	10
Advertising Fund	13
Dealer Portion of Fund	13
Dealer Contributions	13
Use of Contributions	13
Accounting for Contributions	13
Factory Portion of Fund	14
Agent or Legal Representative of Seller, Dealer Not Made	19
Agreement of Parties, Sole	20
Building Service for Dealer	9
Capital Requirements	9
Commitments, Responsibility for Dealer's	19
Complaints, Customer	10
Design, Change of	7
Law, Applicable	20
Model Change	6
Model Change at Reduced List Price	7
Name and Trade-Marks, Chevrolet	12
Seller's Exclusive Rights	12
Discontinuance of Use Upon Termination	12
Dealer's Liability for Failure to Discontinue Use	13
Notices	20
Orders, Handling of Dealer's	3
Three Months' Estimate of Requirements	3
Ten Day Report	3
Orders	3
Failure to Fill Orders	4
Owner, Care of	11
Conditioning of New Motor Vehicles	11
Owner's Service Policy	11
Stock of Parts	11
Representation as to Parts	11
Special Tools	11
Mechanical Staff	12
Flat Rate System	12
Warranty Adjustment	12
Customer Relationship	12
Inspection of Facilities	12
Parts and Accessories	8
Selling Rights	8
Prices	8
Billing and Payment	8
Return of Defective Parts and Accessories	8
Return of Inactive Parts	9
Right to Return Parts and Accessories Within Thirty Days	9
Payment by Dealer	4
Place of Business Satisfactory to Seller, Dealer's	9
Premises, Claims of Loss on Dealer's	17
Terminations to Which Applicable	17
Premises to Which Applicable	18
Payments on Leased Premises	18
Total Usage	18
Partial Usage	18
Owned Premises	19
Premises Partially Owned and Partially Leased	19
Use of Premises After Termination	19
Time for Filing Claims	19
Pricing, Change in	5
Seller's Rights	5
Price Increases	5
Price Reductions	5
New or Different Body Types	6
Purchasers, Treatment of	10
Informing Purchasers as to Details of Their Purchases	11
Representations as to Contents of Charges	11
Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories	11
Records, Sales and Service	10
Repurchase When Agreement is Terminated, Seller's Right to	16
Sale of Motor Vehicles, Satisfactory	10
Sales Staff	10
Selling Privilege, Dealer's	3
Services, Dealer's Personal	9
Shipments, Car	4
Mode of Shipment	4
Prepayment of Transportation Charges	4
Assignment of Reparation	4
Liability for Demurrage	4
Diversion	5
Claims	5
Additional Charges	5
Signs	12
Product Sign	12
Service Sign	12
Other Necessary Signs	12
Taxes, Local	20
Termination	14
Termination by Dealer	14
Termination for Cause	14
Termination, Transactions After	15
Effect of Termination on Orders	15
Termination Deliveries	15
Effect of Transactions After Termination	16
Waivers, No Implied	20
Warranty	7

[fol. 462]

347

462

Attach Signatural Attachment to This Page.

Form No. CSD-202-Chevrolet-54
PRINTED IN U.S.A. 12500 6-54

Identification No. 54 -11835

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

Terms and Conditions

Direct Dealer

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. Dealer's Selling Privilege

While this Agreement shall be and remain in effect, Dealer shall have the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis, and the non-exclusive privilege of using the word "Chevrolet" and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. Handling of Dealer's Orders

A. Three Months' Estimate of Requirements

Dealer will, unless otherwise advised by Seller, furnish Seller for its general guidance every month, on the date specified by Seller, an estimate, on forms provided by Seller, of his requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately.

B. Ten-Day Report

In order to permit Seller to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales, Dealer will furnish Seller, every ten (10) days, with a report known as the "Ten-Day Report" on standard forms supplied by Seller. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

C. Orders

Dealer, at mutually satisfactory periods, shall submit orders for Chevrolet motor vehicles and chassis upon order forms supplied by Seller. Orders for any standard products not shipped during the month for which delivery was scheduled will remain in effect unless cancelled in whole or in part by either party upon written notice to the other. However, orders for special motor vehicles and chassis may be cancelled only by Seller.

[fol. 464]

349

464

Any motor vehicle or chassis which differs in any way from the standard specifications adopted by Seller or special equipment of any type shall be considered "special".

D. Failure to Fill Orders

Seller shall not be liable for failure or delay in filling orders of Dealer where such failure or delay is due, in whole or in part, to any cause beyond Seller's control or to any material, labor, transportation, or utility shortage or curtailment or to any labor trouble in the plants of Seller or its suppliers or where delivery is prohibited, prevented or delayed, whether or not arising out of Seller's fault, and Dealer hereby releases and discharges Seller from any and all liability for any and all damages and losses arising from the failure of Seller to fill any orders placed hereunder.

3. Payment by Dealer

Dealer shall pay Seller for each shipment of new Chevrolet motor vehicles and chassis, Dealer's price from Seller in effect at the time of such shipment, together with a Factory Handling Charge determined by Seller which shall include reimbursement to Seller for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. Car Shipments

A. Mode of Shipment

Seller has the right to ship all motor vehicles and chassis purchased by Dealer hereunder by whatever mode of transportation and from whatever point it may select. However, Seller will endeavor, whenever practicable, to follow Dealer's requests with regard to routing.

B. Prepayment of Transportation Charges

Seller will prepay all transportation charges on shipments of motor vehicles and chassis made to Dealer hereunder, and Dealer will pay Seller, in addition to the prices otherwise provided for herein, transportation charges to be determined and set by Seller based on the published all-rail freight charges from Flint, Michigan, to Dealer's established railroad delivery point in effect on the date such shipments are delivered to carrier for transportation. In lieu of the foregoing transportation charges, Seller may establish and Dealer will pay Seller average transportation charges either on national, regional, zone or single market bases. In addition, if deliveries are made at Dealer's place of business, Seller will establish and Dealer will pay reasonable charges for such deliveries.

C. Assignment of Reparation

Dealer agrees to and hereby does assign, set over, and transfer to Seller his right, if any, to any refund, reparation, or damages from any carrier arising out of or in connection with payment of any unlawful charges for transportation of said motor vehicles or chassis, whether said payment was made by Dealer or Seller, and Dealer hereby releases Seller from any liability to him on account of any reduction in the transportation charges billed hereunder resulting from any subsequent change in rate or rates, or in the mode of transportation.

D. Liability for Demurrage

Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other

[Vol. 403]

charges accruing after arrival of such shipment at destination.

E. Diversion

If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal, for any reason, to accept motor vehicles or chassis that may be shipped Dealer on Dealer's orders, Dealer will assume responsibility for and pay the additional charges and expenses, incident to such diversion.

F. Claims

All claims for loss of or damage to shipments of motor vehicles and chassis shipped hereunder while in the possession of the transportation agency shall be submitted to Seller by Dealer within ten (10) days after date of delivery of shipment to Dealer.

G. Additional Charges

If Dealer orders one or more motor vehicles or chassis boxed or crated or the shipping regulations make boxing or crating necessary, or if Seller finds it expedient in order to facilitate shipment to double deck one or more motor vehicles or chassis to a carload, or to dismantle same in order to load for economy, or if it is necessary to load on an open freight car and the use of a tarpaulin or cover is needed, a charge covering extra cost of such items shall be made by Seller and paid by Dealer. Such charge will be added to the invoice covering shipment.

5. *Change in Pricing*

A. Seller's Rights

Seller has the right at any time to change prices, discounts, terms and provisions affecting any current models or body types of motor vehicles or chassis, and to issue new applicable Price Lists or bulletins.

If Seller changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Seller at the time that the same are made effective by Seller.

B. Price Increases

Seller shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any motor vehicle or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel orders or parts thereof for motor vehicles or chassis to which such change applies, provided written notice of cancellation is delivered to Seller within ten (10) days after receipt by Dealer of Seller's notice. Failure to so cancel within the time specified will constitute a confirmation of all unshipped orders for delivery in accordance with said change.

C. Price Reductions

If Seller reduces the list price on any of its current models or body types of motor vehicles or chassis, Seller will refund or credit an allowance to Dealer on all new and unused motor vehicles and chassis of current model and body type purchased from Seller and paid for by Dealer during the twelve (12) months immediately preceding the date of such reduction and carried in Dealer's stock as new and unsold at the time such reduction is made, an amount equal to the difference between the price Dealer shall have paid for any such motor vehicles or chassis and the reduced amount then payable for the same; provided, however, that no refund will be made upon any motor vehicle or chassis used by Dealer for demonstration purposes, nor will any such refund be granted unless claim therefor be made by Dealer in writing within

[fol. 466]

thirty (30) days from the date that such reduction becomes effective. All such claims must be supported by evidence satisfactory to Seller showing that Dealer is entitled to such claimed refund. In the case of motor vehicles or chassis purchased by Dealer under a title retaining instrument Seller reserves the right to pay such difference in price to the holder of the instrument.

D. New or Different Body Types

In the event that Seller produces or manufactures at any time, a model or body type of motor vehicle or chassis new or different in any respect from motor vehicles or chassis previously or currently being manufactured, Dealer shall not thereby have a claim for any refund upon any motor vehicle or chassis previously purchased by him, whether or not the price or value of motor vehicles or chassis previously manufactured by Seller is affected thereby, unless otherwise provided herein.

6. Model Change

In the event that Seller shall, at any time, discontinue current models and body types of Chevrolet motor vehicles or chassis, and substitute in place thereof new models and body types, Seller will make an allowance to Dealer on the total number of new unused motor vehicles and chassis of such discontinued models or body types purchased from Seller and paid for by Dealer prior to such model change and still in Dealer's stock unsold on the date hereinafter specified, as shall be in excess of three per cent (3%) of the total number of all Chevrolet motor vehicles and chassis of the discontinued models and body types purchased by Dealer prior to such change.

The amount of such allowance and the time of payment shall be determined by Seller. Such allowance, however, shall in no case be less than four per cent (4%) of the average list price of all series of Chevrolet motor vehicles and chassis of such models and body types about to be discontinued based on the national averages according to the records of Seller.

Where fractions of a motor vehicle are involved, Dealer will receive a proportionate amount of the allowance on such fraction.

The allowance will not be made on any motor vehicles or chassis used by Dealer for demonstration purposes.

The date on which Dealer's stock of discontinued models shall be determined shall be the Announcement Day as so designated by Seller on which the new models and body types are officially announced to the general public (local preview announcements excepted).

All claims for the allowance must be made within thirty (30) days from the Announcement Day and must be supported by evidence satisfactory to Seller showing that Dealer is entitled to said allowance.

Seller may elect to make the aforesaid allowance prior to the announcement of new models for the next succeeding selling year and in that event the allowance will be made on such new unused Chevrolet motor vehicles and chassis of those models and body types about to be discontinued, purchased from Seller and paid for by Dealer prior to the date so designated by Seller and still in Dealer's stock unsold on said date, as shall be in excess of three per cent (3%) of the quantity of Chevrolet motor vehicles and chassis of those models and body types purchased by Dealer prior to such designated date.

If Seller elects to make the aforesaid allowance prior to an announcement of new models, Seller

[fol. 467]

will make the same allowance with respect to purchases by Dealer from Seller of corresponding Chevrolet motor vehicles and chassis of those models and body types about to be discontinued for the balance of the current selling year.

The provisions of this Section 6 were developed and intended to afford Dealer some relief with respect to sales of discontinued models and body types in model changeover periods under normal conditions only when there might be an excessive number of motor vehicles and chassis in relation to demand. In the event, therefore, that at the time current models and body types of Chevrolet motor vehicles and chassis are discontinued and new models and body types substituted in place thereof, Dealer has or could have retail orders for current models and body types in excess of the number of such vehicles then on hand, or in the event that there are other circumstances which, in Seller's opinion, would not warrant the allowance herein provided for, Dealer, upon request of Seller, will execute a waiver of the provisions of this Section 6.

7. Model Change at Reduced List Price

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Seller will refund or credit to Dealer a proportionate amount on the price paid by Dealer for those new unused motor vehicles and chassis of the discontinued series purchased from Seller which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refund will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different series or line of motor vehicles. In the latter event Seller will make such refund or allowance as shall, in its opinion, seem equitable under the circumstances.

Dealer will be entitled to receive the refund allowable under this Section in addition to such allowance as he may be entitled to under Section 6.

8. Change of Design

Seller has the right to change the design of any new Chevrolet motor vehicle, chassis, accessories or parts thereof at any time, without notice to Dealer. If Seller shall make a change in design, there shall be no obligation upon Seller to make such change upon any Chevrolet motor vehicles, chassis, accessories, parts or other products manufactured or sold or being manufactured or sold in accordance with orders of Dealer; nor shall Seller be obligated to make a similar or corresponding change or substitution on any Chevrolet motor vehicle, chassis, accessory or other part or product previously purchased by or shipped to Dealer.

9. Warranty

There are no warranties, expressed or implied, made by Seller to Dealer on the Chevrolet motor vehicles, chassis or parts furnished hereunder except to the extent comprehended in the following:

> "The Manufacturer warrants each new motor vehicle, including all equipment or accessories (except tires) supplied by the Manufacturer, chassis or part manufactured by it to be free from defects in material and workmanship under normal use and service,

[fol. 468]

its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Chevrolet Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident."

10. *Parts and Accessories*

A. Selling Rights

Seller hereby grants to Dealer the non-exclusive right to sell new genuine Chevrolet parts and accessories and Seller will sell Dealer direct or through a designated parts warehouse, such new genuine Chevrolet repair parts and accessories.

"Genuine Chevrolet parts and accessories" as used in this Agreement are defined as being parts and accessories manufactured by or for Seller, designed for use on Chevrolet motor vehicles or chassis, and distributed by Seller or any division or subsidiary of General Motors Corporation.

B. Prices

Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions established by Seller and in effect at the time of shipment.

C. Billing and Payment

Parts and accessories ordered by Dealer as aforesaid, will be invoiced to Dealer by Seller, and settlement therefor made by Dealer with Seller except in the case of dealers having current Selling Agreements covering two or more of the following makes of motor vehicles: Chevrolet, Pontiac and Oldsmobile. In the latter event the divisions of General Motors Corporation with which Dealer has such Selling Agreements will arrange among themselves as to which one of them will carry such Dealer's account, and thereupon all parts and accessories ordered by such Dealer will be invoiced for the account of such division and Dealer will make settlement of such invoices with the division for whose account same are rendered.

Parts and accessories ordered by Dealer will be billed net cash payable the tenth (10th) of the month following date of billing, unless Seller in its discretion places shipments on a COD basis, collection charges, if any, to be paid by Dealer.

D. Return of Defective Parts and Accessories

After receiving specific authorization from Seller, Dealer may return defective Chevrolet parts and accessories to Seller for credit, at Dealer's net prices in effect at date such parts and accessories are received by Seller, such parts and accessories to be shipped, transportation charges prepaid, to the destination specified by Seller. Dealer will be reimbursed for transportation charges prepaid by him on authorized shipments of defective parts and accessories.

[fol. 469]

354

469

E. Return of Inactive Parts

In the event Dealer develops an inactive stock of genuine Chevrolet parts, or for any other reason desires to liquidate a portion of his parts stock, Dealer may submit to Seller a list of those parts, in good condition and unused, which he desires to return for credit, Seller shall, as promptly as possible, notify Dealer as to the parts, if any, on said list which Seller will accept and the price at which same will be accepted. Thereupon Dealer may ship to the destination specified by Seller, transportation charges prepaid, the parts which Seller has agreed to accept.

E. Right to Return Parts and Accessories Within Thirty Days

Dealer may return any new Chevrolet parts and accessories purchased hereunder, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer, such parts and accessories to be shipped to the destination specified by Seller, transportation charges prepaid. Credit on new Chevrolet parts and accessories will be at Dealer's net prices. With respect to accessories, Dealer shall be entitled to return same whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle. Under the same conditions, Dealer may return anti-freeze, polishes, chemicals and other similar items purchased hereunder for credit at Dealer's net prices.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Seller upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. Dealer's Personal Services

Each person named in Paragraph Third of this Agreement shall devote his full time, attention, and energy to the conduct of the dealership business.

12. Dealer's Place of Business Satisfactory to Seller

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

13. Building Service for Dealer

Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as a complete working plan and will be furnished solely as a suggestion.

14. Capital Requirements

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set standards for dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount

[fol. 470]

and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

15. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them and which will enable Seller to prepare composite dealer profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

B. Examination of Accounts and Records

In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

16. Satisfactory Sale of Motor Vehicles

Dealer shall properly develop to Seller's satisfaction the sale of Chevrolet motor vehicles and chassis in the area described in Paragraph First.

17. Sales Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the area described in Paragraph First.

18. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

19. Customer Complaints

Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to securing and maintaining the goodwill of the public toward Chevrolet products.

20. Treatment of Purchasers

Dealer recognizes the importance of free competition, of selling Chevrolet products at fair prices with relation to his costs, of satisfactory treatment of purchasers and the necessity of preventing any unfair or deceptive acts or practices in the sale of Chevrolet motor vehicles in order to protect the Chevrolet name and trademarks and protect and promote the goodwill of Seller attached thereto. Accordingly,

[fol. 471]

356

471

A. Informing Purchasers as to Details of Their Purchases

Dealer will advertise his delivered prices in his town and will inform retail purchasers of such prices and will give them itemized invoices covering the details of their purchases.

B. Representations as to Contents of Charges

Dealer will not make any misleading statements or misrepresentations as to the items making up his total selling price or as to the prices related to such items nor make any statements intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents transportation charges and Factory Handling Charges than the amounts of such items actually charged to and paid for by Dealer.

C. Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment or accessories and Dealer, therefore, will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet motor vehicle without such optional equipment or accessories.

21. Care of Owner

Recognizing the importance of the goodwill of owners toward Chevrolet products, Dealer will furnish prompt and satisfactory service at reasonable cost to Chevrolet owners. Accordingly,

A. Conditioning of New Motor Vehicles

Dealer will condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

B. Owner's Service Policy

Dealer will execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy", on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy and expressly authorizes Seller to charge his account with coupons covering inspections on new Chevrolet motor vehicles sold by Dealer and performed by other Chevrolet dealers under such "Owner's Service Policy."

C. Stock of Parts

Dealer will carry in stock at all times during the life of this Agreement an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.

D. Representation as to Parts

Dealer will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any part or parts which are not in fact genuine new Chevrolet repair parts as defined in subsection A of Section 10 of this Agreement.

E. Special Tools

Dealer will buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to Chevrolet owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which

[fol. 472]

472

shall not exceed One Hundred Fifty Dollars ($150.00), as Seller deems essential to service such new models properly. Dealer will pay for such new-model tools promptly on receipt thereof.

F. Mechanical Staff

Dealer will employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners.

G. Flat Rate System

For policy, warranty, and any other work performed by Dealer for Seller's account, Dealer will install the Chevrolet Flat Rate System of time allotments as recommended and furnished by Seller and charge Seller on the basis of such time allotments at a minimum of sixty-five per cent (65%) of the labor rates related thereto as agreed upon with Seller.

H. Warranty Adjustment

Dealer will replace any defective part or parts as comprehended under the warranty set forth in Section 9 hereof on motor vehicles sold by Dealer without expense to the owners of such vehicles and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit to Dealer an amount equal to the then current dealer cost of such part or parts plus ten percent (10%) and in addition sixty-five percent (65%) of the Flat Rate charge for installing the new part or parts according to the Flat Rate System of time allotments and labor charges as provided in subsection G above.

I. Customer Relationship

Dealer will make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and will establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied, shall be promptly reported to Seller with the name of the owner making same.

J. Inspection of Facilities

Dealer will permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

22. Signs

Dealer will purchase, erect, and maintain at his expense the following signs:

A. Product Sign

A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. Service Sign

A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Other Necessary Signs

Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

[fol. 473]

23. Chevrolet Name and Trade-Marks

A. Seller's Exclusive Rights

Seller is entitled to the use of the word "Chevrolet", and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories, and of the goodwill attached thereto.

B. Discontinuance of Use Upon Termination

If the word "Chevrolet" is used in the name

358

473

under which Dealer's business is conducted or the word "Chevrolet" or any Chevrolet trade-mark, including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Seller, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connection with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

C. Dealer's Liability for Failure to Discontinue Use

If Dealer, after termination of this Agreement, shall refuse or neglect to keep and perform the provisions of subsection B, Dealer shall reimburse Seller for all costs, attorneys' fees and other expenses incurred by Seller in connection with legal action to require Dealer to comply therewith.

21. Advertising Fund

In order to give Chevrolet dealers the advantages of a comprehensive and coordinated dealer advertising program, an Advertising Fund, composed of a dealer portion and a factory portion, has been established and is administered by Seller for the purpose of supporting such a program.

A. Dealer Portion of Fund

(1) Dealer Contributions

Seller will collect the sum of Twenty Dollars ($20.00) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the dealer portion of the Advertising Fund for the account of Dealer.

(2) Use of Contributions

The amounts contributed by Dealer shall be used solely in paying the cost of local advertising, including preparation expense, in Dealer's area, through such local advertising media, as in the judgment of Seller will benefit Dealer. If a dealer desires to participate in local advertising in a community outside his area, he may do so provided that he shall have reached an agreement in writing with the dealer or dealers in whose area such community is located as to the amount per motor vehicle or chassis which is to be taken out of his contributions to the Advertising Fund and applied to such advertising. A copy of said agreement shall be furnished to Seller.

All local advertising to be paid for out of the dealer portion of the Advertising Fund shall carry the name and address of Dealer except that if, in the judgment of Seller, that is impractical, a suitable group reference will be used.

(3) Accounting for Contributions

Contributions to the Fund shall be credited to the Fund for the joint account of all dealers involved where two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of Seller advertising in said large city substantially covers such suburban community, or where two

[fol. 474]

474

or more dealers are located within a group of communities which, in the judgment of Seller, may be considered as a common area for purposes of local advertising; contributions by all other dealers shall be credited to the Fund for the separate account of each dealer involved.

With respect to contributions of dealers located in cities, towns, or communities as aforesaid which are credited to the Fund for the joint account of the dealers involved, the unspent portion, if any, of any such dealer's contribution, upon termination of this Agreement shall remain in said joint account and shall be used in the payment of the cost of local advertising and not refunded to Dealer. With respect to contributions of all other dealers which are credited to the Fund for the separate account of each such dealer, the unspent portion, if any, of any such dealer's contribution, upon termination of such dealer's Selling Agreement, shall be refunded to such dealer.

As soon as practicable after the close of each calendar year during the term of this Agreement, or in the event of termination of this Agreement, as soon as practicable after the effective date of termination, Dealer shall be furnished with a statement of his account in dealer portion of said Fund or of the joint account to which he has contributed. Such statement shall show the total advertising expenditures by media classification charged against said account, the total collections and the resulting balance, and in the case of a joint account, the amount of the individual contribution of Dealer.

B. Factory Portion of Fund

Seller will pay into the Advertising Fund the sum of Six Dollars ($6.00) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the factory portion of the Advertising Fund.

The factory portion of the Fund may be used by Seller for advertising of such type in such media and at such time and place as, in the opinion of Seller, will most effectively serve the dealer needs or interests as determined by Seller.

TERMINATION OF AGREEMENT

25. Termination

A. Termination by Dealer

Dealer may terminate this Agreement by written notice of termination delivered to Seller, such termination to be effective one (1) month after receipt by Seller of such notice.

B. Termination for Cause

(1) If Seller or Dealer requires a license for the performance of any obligation under or in connection with this Agreement in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties shall fail to secure or maintain a license or renewal thereof or if such license shall be suspended or revoked, irrespective of the cause or reason therefor, either party may immediately terminate this Agreement by giving to the other party written notice of such termination.

(2) If Dealer does not develop the sale of Chevrolet motor vehicles and chassis to the satisfaction of Seller or does not conduct his business in accordance with any requirement set forth in Sections 11 and 12, Sections 14 to 19, inclusive, or Section 21 of this Agreement, to the satisfaction of Seller, Seller may terminate this Agreement by giving to Dealer written notice of termination to be effective

[fol. 475]

360

475

three (3) months after receipt of such notice. (3) Seller may terminate this Agreement immediately by delivering to Dealer or his representative written notice of such termination in the event of the happening of any of the following:

a. Death, incapacity, or the removal, resignation, withdrawal, or elimination from the dealership for any reason of Dealer or any person named in Paragraph Third of this Agreement.

b. Any attempted transfer or assignment of this Agreement or any right or obligation hereunder.

c. Any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any interest in the direct or indirect ownership or active management of dealership without the prior written approval of Seller.

d. Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

e. Insolvency of Dealer;
Filing of a voluntary petition in bankruptcy by Dealer;
Filing of a petition to have Dealer declared bankrupt, provided it is not vacated within thirty (30) days from date of filing;
Appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment;
Execution by Dealer of an assignment for the benefit of creditors.

f. Conviction of Dealer or any principal officer, principal stockholder or manager of Dealer or any partner in dealership of any crime which, in the opinion of Seller, may adversely affect the goodwill or interests of Dealer, dealership or Seller.

g. Failure of Dealer to maintain dealership operation as a going business, open during customary business hours, for seven consecutive business days, provided such failure is not due to causes beyond Dealer's control and is without Dealer's fault or negligence.

26. Transactions After Termination

A. Effect of Termination on Orders

In the event that no new Selling Agreement is entered into by the parties upon expiration of this Agreement or in the event that this Agreement is terminated in accordance with any provision of Section 25, all orders of Dealer for motor vehicles, chassis, parts and accessories then outstanding shall be automatically cancelled. Termination of this Agreement shall not release Dealer, however, from the obligation to pay any sum which may then be owing Seller or from the obligation to pay for any motor vehicle, chassis, or equipment for same which is special, as defined in subsection C of Section 2 of this Agreement, which may have been ordered by Dealer and not shipped prior to any termination of this Agreement.

[fol. 476]

B. Termination Deliveries

In the event of termination of this Agreement under the provisions of subsection A, subsection B (3)a or subsection B (3)d of Section 25 of this Agreement, but not otherwise, Seller will use its best efforts to furnish Dealer with Chevrolet motor vehicles and chassis to fill his bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles and chassis delivered to Dealer by Seller during the three (3) months immediately preceding the effective date of termination or, if termination is made effective within the last three (3) months of the term stipulated in

476

the Agreement, then not to exceed the total number of motor vehicles and chassis delivered to Dealer during such period of time preceding the effective date of termination as is equal to the unexpended portion of the term stipulated in the Agreement, subject, moreover, to the following further conditions and limitations:

(1) Within ten (10) days following termination, Dealer shall deliver to Seller a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Seller to make delivery up to the total number of motor vehicles required to be delivered by Seller as above described. Those orders for which delivery is thus specified by Dealer, when approved by Seller, shall constitute Dealer's Schedule of Termination Deliveries. No change or substitution may be made by Dealer in such Schedule of Termination Deliveries and Seller shall not be obligated to make deliveries of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Seller the detailed Schedule above required, Dealer shall have no further rights.

(2) Dealer shall accept any motor vehicle required to be delivered by Seller hereunder against Dealer's Schedule of Termination Deliveries immediately upon notification by Seller of the availability to Dealer of such vehicle and in accordance with the terms and conditions of sale established by Seller and in effect at the time of shipment. In the event of his failure to do so, Dealer shall have no further right to receive such vehicle or any other vehicle in lieu of it.

(3) Vehicles shall be delivered by Seller hereunder in substantial accordance with the schedule and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Seller notice immediately of cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Seller of a motor vehicle to apply against such order, Seller shall be released from any obligation to make delivery of such vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied upon termination under this subsection 26B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of products to Dealer or any other act of Seller after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

27. Seller's Right to Repurchase When Agreement Is Terminated

In the event of termination of this Agreement:

A. Seller will purchase from Dealer and Dealer will sell to Seller:

[fol. 477]

477

(1) All new and unused Chevrolet motor vehicles and chassis of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including transportation charges paid to Seller thereon.

Cars

(2) All unused and undamaged Chevrolet repair parts for the current and three (3) preceding models purchased direct from Seller and on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, exclusive of transportation charges.

Parts

(3) All unused and undamaged Chevrolet accessories purchased direct from Seller during the six-month period immediately preceding the effective date of such termination and on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost exclusive of transportation charges.

Accessories

(4) All new and unused commercial bodies and cabs of current models purchased direct from Seller on hand in Dealer's place of business or in Dealer's possession at Dealer's net prices according to current Price Lists then in force plus transportation charges paid to Seller thereon. In the event that any such commercial bodies or cabs have been mounted on chassis by Dealer, the price to be paid therefor shall be the net price to Dealer for the complete unit according to current list prices, even though Dealer purchased same separately at a higher price.

Comm. Bodies

(5) Any signs belonging to Dealer of a type recommended in writing by Seller and bearing the word "Chevrolet", at a price mutually agreed upon by Seller and Dealer. If Seller and Dealer cannot agree on a price, they shall select a third party who shall set the price.

Signs

B. If Dealer desires to sell the same, Seller will purchase all the special tools and mechanical shop equipment of a type recommended by Seller purchased by Dealer during the twelve (12) month period immediately preceding termination while he has been operating under a Chevrolet Selling Agreement and designed specifically for service of Chevrolet motor vehicles, at a price mutually agreed upon by Seller and Dealer. If Seller and Dealer cannot agree on a price, they shall select a third party who shall set the price.

Tools

C. Dealer shall, on or before the date of termination, furnish Seller with a list of the motor vehicles, chassis, parts, accessories, signs, tools and shop equipment aforesaid.

D. Upon demand and tender by Seller of the purchase price determined as aforesaid, Dealer will deliver such goods to Seller forthwith in accordance with Seller's instructions.

E. Dealer shall execute and deliver to Seller instruments satisfactory to Seller, conveying title to the aforesaid property. If such property is subject to lien or charge of any kind Dealer will procure the discharge and satisfaction thereof prior to the repurchase of such property by Seller.

28. Claims of Loss on Dealer's Premises

A. Terminations to Which Applicable

In the event of termination of this Agreement

[fol. 478]

478

by Seller under the provisions of subsection B (1), B (2), or B (3)a of Section 25 hereof, or in the event Dealer and Seller do not enter into a new Selling Agreement upon the expiration of the term of this Agreement, but not otherwise, Dealer may establish claims upon Seller for losses sustained on Dealer's premises in accordance with and subject to the provisions and limitations set forth in this Section 28.

B. Premises to Which Applicable

The reimbursement for loss on Dealer's premises shall be applicable only to premises used by Dealer in the performance of Dealer's obligations under this Agreement, either as owner or as lessee or as owner of part and lessee of part provided, moreover, that the premises involved shall have been owned or leased by Dealer prior to the time that Dealer had knowledge that a termination on one of the bases specified in subsection A above would become effective and that the ownership or lease of the premises shall continue subsequent to the effective date of termination of this Agreement.

C. Payments on Leased Premises

(1) Total Usage

In the event the premises involved are used by Dealer entirely in the performance of Dealer's obligations under this Agreement, Seller will reimburse Dealer for one-half (1/2) of the monthly rental specified in Dealer's lease and paid by Dealer for the balance of the term of the lease after the effective date of termination, not exceeding twelve (12) months from the effective date of termination, provided, however, that the amount of liability shall not be more than Seventy-five Cents ($0.75) per month per motor vehicle or chassis (one-half (1/2) of the rent standard of One Dollar and Fifty Cents ($1.50) per motor vehicle or chassis per month established by Seller), based on the number of Chevrolet motor vehicles and chassis purchased by Dealer in the twelve (12) months immediately preceding the effective date of termination. If Dealer secures a reduction in rent at any time applying to the period covered by his claim, the amount of his claim allowable as aforesaid shall be reduced proportionately, however, based on the ratio that the monthly rental reserved in the lease bears to the reduced monthly rental; and for this purpose a settlement by Dealer with his lessor at any time during the term of his lease shall be treated as a reduction in rent unless accompanied by the surrender of possession, in which case no claim by Dealer shall be allowable for any loss after the date of such surrender of possession.

(2) Partial Usage

In the event that the premises involved are also used in the conduct of another business by Dealer or by a firm in which Dealer or the principal stockholders or partners of Dealer are the principal stockholders or partners and in the event that within a period of three (3) months this Selling Agreement is terminated on any one of the bases specified in subsection A above and such other businesses are terminated and cease operations, Seller will reimburse Dealer for such percentage of one-half (1/2) of the monthly rental as defined in subsection (1) immediately preceding as is equal to the percentage of use of the premises for the performance of Dealer's obligations under this Agreement, as determined by Seller, subject, however, to all the further provisions, limitations and conditions as set forth in said subsection (1).

[fol. 479]

364

479

D. Owned Premises

In the event that the premises used by Dealer as provided in subsection B above are owned by Dealer, Dealer may establish a claim upon Seller for one-half (½) of the net loss sustained by Dealer in connection with said premises for the period that the same are owned by him subsequent to termination of this Agreement based on the then current fair rental value, such claim, however, not to exceed the amount of liability computed in accordance with the provisions of subsection C above. In determining net loss, only such items as would be usually chargeable to a tenant shall be included.

E. Premises Partially Owned and Partially Leased

If Dealer is using premises leased by him as well as premises owned by him in the performance of this Agreement, Dealer's claim upon Seller for the portion leased by Dealer shall be computed in accordance with the provisions of subsection C above and for the portion owned by Dealer shall be computed in accordance with the provisions of subsection D above.

F. Use of Premises After Termination

In the event that the premises involved or any part thereof are occupied by anyone for business or any other purpose at any time after the effective date of termination, or, in the event the premises involved or any part thereof could, in the opinion of Seller, be occupied by any business with which Dealer may be associated at any time after the effective date of termination, Dealer shall not be entitled to any payment for loss beyond the initial date of such occupancy or the date when, in the opinion of Seller, such occupancy could have been effected, provided, however, that in the event of immediate termination pursuant to subsection B (3)a of Section 25 of this Agreement, the premises may be used by the dealership for a period of three (3) months immediately following the effective date of termination without affecting the dealership's right to make claim under this Section 28 for a period of twelve (12) months commencing with the conclusion of such use, but no claim will be allowed for the time said premises are so used.

G. Time for Filing Claims

Seller shall not be liable to Dealer under this Section 28 on claims covering loss on premises leased or owned by him unless the same are filed within two (2) months after the expiration of the period covered by said claim, Seller will pay such claims filed in accordance herewith on or before two (2) months after date of receipt. Dealer may file interim claims, and interim settlements may be made by Seller at Seller's option. Seller shall have access to and may audit Dealer's books and records insofar as may be necessary to verify claims filed under this Section 28.

[fol. 480]

GENERAL PROVISIONS

29. Dealer Not Made Agent or Legal Representative of Seller

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Seller for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Seller or to bind Seller in any manner or thing whatsoever.

30. Responsibility for Dealer's Commitments

Dealer shall be solely responsible for any and all obligations or liabilities incurred or assumed by him in the performance hereof, and Seller shall not be held responsible in any manner therefor, irrespective of any suggestion or recommendation with respect thereto by Seller or any of its employes or representatives unless Seller has agreed to assume the responsibility, either

365

480

in whole or in part, by written agreement executed by its General Manager or its General Sales Manager, except insofar as it is specifically provided otherwise in this Agreement.

31. Local Taxes

Dealer hereby certifies that all motor vehicles and chassis, parts, accessories and items similar thereto purchased from Seller are for resale in the course of Dealer's business. Dealer further certifies that he has obtained any license required to collect sales or use taxes incurred in any such resale transactions, the number, if any, of such license has been or will be furnished to Seller. Dealer agrees, as to any such motor vehicles and chassis, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or purchase, to file any tax returns required in connection therewith, and to hold Seller harmless from any claims or demands made by such taxing authority with respect thereto.

32. Notices

Any notice required to be given by either party to the other under or in connection with this Agreement shall be in writing and delivered personally or by mail. Notices to Dealer shall be directed to Dealer, or his representative at Dealer's place of business; notices to Seller shall be directed to the Zone Manager of the area in which Dealer is located.

33. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

34. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

35. Sole Agreement of Parties

There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, chassis, parts or accessories.

This Agreement cancels and supersedes all previous agreements between the parties.

No change in, addition to, or erasure of any printed portion of this Agreement (except the filling in of blank lines) shall be valid or binding upon Seller unless the same is approved in writing by the General Sales Manager of Seller.

No agreement between the parties which is at variance with any of the provisions of this Agreement or which imposes definite obligations upon either party not specifically imposed by this Agreement or which is intended to be effective or performed following the expiration or other termination of this Agreement and imposes obligations or extends the time for performance thereof other than as provided in this Agreement shall be binding upon either party unless it bears the facsimile signature of the General Sales Manager and, except for Direct Dealer Price Lists, is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or Zone Manager of Seller, and is executed or accepted by Dealer.

[fol. 481]

481

MANUAL OF

SERVICE DEPARTMENT POLICIES *and* PROCEDURES

EFFECTIVE JUNE 1, 1950



CHEVROLET MOTOR DIVISION
GENERAL MOTORS CORPORATION

[fol. 482]
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY
DEFENDANT'S EXHIBIT No. 10

482

TABLE OF CONTENTS

Subject	Page
Policy on Warranty Adjustments and Policy Adjustments	3
Owner Service Policy	7
Policy on Canadian "Owner Service Policy" 1000 and 2000-Mile Inspection	8
Policy on General Motors Owned Chevrolet Cars	8
Policy on Cars Sold by G. M. Foreign Distributors Division	8
Policy on Unit Replacement	9
Policy on Units Sold to Federal, State, County and City Governments on Direct Bids by Chevrolet Motor Division	9
New Car and Truck Inspection and Adjustment Form S&M-22	10
Customer Relation Report Form GSD-637	11
How to Submit L&MR Form GSD-17	13-15
Dealer's Authorized Signatures, Form GSD-130	20
Sample GSD-17-T L&MR Listing Tag	20
Policy on Radio	21
Instructions on Return of Defective New Parts	23
Maintenance Work	23
Product Information Report, Form GSD-541	23-24

POLICY ON WARRANTY ADJUSTMENTS AND POLICY ADJUSTMENTS

Effective November 1, 1949

THE "MANUFACTURER'S WARRANTY" WHICH IS PRESENTLY SET FORTH AT LENGTH IN YOUR CURRENT SELLING AGREEMENT READS AS FOLLOWS:

> **"The Manufacturer warrants each new motor vehicle, including all equipment or accessories (except tires) supplied by the Manufacturer, chassis or part manufactured by it to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.**
>
> **"This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Chevrolet Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident."**
>
> ***(Note: If the car is resold within the Warranty period, the subsequent owner, or owners, is entitled to the Warranty protection until the expiration of the original ninety (90) days or 4,000 miles Warranty period.)***

When defective parts are replaced during this period, the parts that are used as replacements are likewise covered by the Manufacturer's Warranty for a period of ninety (90) days or 4,000 miles *from the date of such replacement.*

THE ABOVE QUOTED "MANUFACTURER'S WARRANTY" IS NOT CHANGED BY THE POLICY OF CHEVROLET MOTOR DIVISION ON WARRANTY ADJUSTMENTS HEREINAFTER SET FORTH. DEALERS ARE NOT AUTHORIZED TO MAKE OR PUBLISH ANY WARRANTY ON BEHALF OF THE MANUFACTURER OTHER THAN THE ABOVE QUOTED "MANUFACTURER'S WARRANTY."

Under the provisions of your Selling Agreement, you have agreed to install any part furnished to you under the above Warranty without expense to the owner and for such service work you are to receive from Chevrolet Motor Division, General Motors Corporation, credit based on the recommended Chevrolet Flat Rate Manual time allotments multiplied by one-half (½) of the labor rate related thereto, as agreed upon with Seller, and which allotments and rates are in effect at the time such work is performed by you.

Under the Policy of Warranty Adjustments hereinafter set forth, the adjustment work which you are authorized to do and which upon acceptance hereof you agree to do is made more extensive. A copy of this bulletin should be kept with your Chevrolet Selling Agreement.

The policy on Warranty Adjustments which is now effective is as follows:

1 • DEFINITIONS

A. Parts • "Parts" used as in the "Manufacturer's Warranty" and as used in this policy is the term applied to parts manufactured by or for Chevrolet Motor Division, General Motors Corporation, designed for use on Chevrolet Motor vehicles or chassis, and distributed by Chevrolet Motor Division, General Motors Corporation, or any Division or subsidiary of General Motors Corporation.

B. Accessories • "Accessories" as used in the "Manufacturer's Warranty" and as used in this policy is the term applied to items designed for attachment to and for use on Chevrolet passenger cars, and which are supplied by Chevrolet Motor Division, General Motors Corporation, such as radios, heaters, and seat covers.

C. Service Supplies • "Service Supplies" is the term used herein to comprehend items used in connection with the servicing or upkeep of cars, such as bottled or canned fluids (but not including brake fluid), oils or greases, and polishes and cleaners.

[fol. 485]

370

485

FOREWORD

This Manual is designed to provide Dealers and their Service Personnel with information required in handling Chevrolet Service and Parts and Accessories Departments Forms, as well as other business transactions.

This Manual is to be kept as a permanent source of reference for your service operation. And when correctly understood, it is very simple, but when not understood, it becomes confusing and often costly.

It would be well for everyone who has anything to do with the Dealer's Service to study and become familiar with the contents as it will put the dealership in a position to efficiently handle this portion of his Service business.

2 • WARRANTY ADJUSTMENTS

A. Parts • Subject to the specific exceptions and conditions enumerated in Paragraph 3 hereof, Dealers are authorized to replace any part or parts of Chevrolet PASSENGER CARS, except tires, sold by authorized Chevrolet dealers and owned by the original purchaser which shall prove defective in material and workmanship under normal use and service within twelve (12) months after delivery of such passenger car to such original purchaser or before such passenger car has been driven twelve thousand (12,000) miles, whichever event shall first occur. This authorization shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Chevrolet Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident.

B. Parts Used in Making Warranty Adjustments • When defective parts are replaced under the provisions of subparagraph A above during the 12 month or 12,000 mile period, the parts that are used as replacements are covered by the policy set out in subparagraph A above from the date of such replacement through the unexpired portion of such 12 month or 12,000 mile period, provided, however, when such defective parts are replaced and the unexpired portion of the 12 month or 12,000 mile period is less than ninety (90) days or 4,000 miles, the parts that are used as replacements are covered by the "Manufacturer's Warranty" for a period of ninety (90) days or 4,000 miles *from the date of replacement.*

The 12 month or 12,000 mile Warranty Adjustment period in connection with parts is to be computed from the date of delivery of the new passenger car to the original purchaser.

(Note: This provision applies to passenger car parts and does not apply to truck parts.)

C. Parts Used in Performing Service or Maintenance Work • When parts are installed by the dealer in the regular course of his service or maintenance work the parts that are used as replacements are covered by the policy set out in subparagraph A above, provided, however, when such parts are installed by the dealer in the regular course of his service or maintenance work and the unexpired portion of the 12 month or 12,000 mile period (computed from the date of delivery of the new passenger car to the original purchaser) is less than ninety (90) days or 4,000 miles the parts that are used as replacements are covered by the Manufacturer's Warranty for a period of ninety (90) days or 4,000 miles *from the date of replacement.*

D. Accessories • Subject to the specific exceptions and conditions enumerated in Paragraph 3 hereof, dealers are authorized to replace any part or parts of Chevrolet passenger car accessories sold by authorized Chevrolet dealers and owned by the original purchaser which shall prove defective in material and workmanship under normal use and service within twelve (12) months after delivery of such new passenger car to such original purchaser, or before such passenger car has been driven twelve (12) thousand miles, whichever event shall first occur. This authorization shall not apply to any accessory where the vehicle or accessory has been repaired or altered outside of an authorized Chevrolet service station in any way so as in the judgment of the manufacturer to affect its stability and reliability nor which has been subject to misuse, negligence or accident.

When accessories are installed for the orginal purchaser after the delivery of such new passenger car, such accessories are covered by the provisions of this policy for the unexpired portion of the twelve (12) month or twelve (12) thousand mile period (computed from the date of delivery of the new passenger car to the original purchaser) provided that if such unexpired portion of the twelve (12) month or twelve (12) thousand mile period is less than ninety (90) days or four (4) thousand miles, the accessories are covered by the Manufacturer's Warranty for a period of ninety (90) days or four (4) thousand miles *from the date of such installation.*

When such accessories are serviced by an authorized Chevrolet service station, the replacement parts that are used are covered for the unexpired portion of the twelve (12) month or twelve (12) thousand mile period that applies to the accessory in which such parts are incorporated, provided that if such unexpired portion of the twelve (12) month or twelve (12) thousand mile period is less than ninety (90) days or four (4) thousand miles, such replacement parts are covered by the Manufacturer's Warranty for a period of ninety (90) days or four (4) thousand miles from the date of such installation.

(Note: This provision applies to passenger car accessories and does not apply to truck accessories.)

[fol. 486]

371

486

E. Parts and Accessories Not Installed by Dealer • All parts and accessories sold by the dealer at wholesale or "over the counter" at retail are subject strictly to the "Manufacturer's Warranty," that is, such parts are warranted only for ninety (90) days or 4,000 miles *from the date of sale by the dealer.* Labor for removing or replacing such parts and accessories will not be allowed except when such labor is performed by a Chevrolet dealer.

F. Service Supplies • Service Supplies are not covered by the Manufacturer's Warranty and are not subject to the provisions of this bulletin.

3 • EXCEPTIONS AND CONDITIONS.

A • Exceptions.

(*1*) Since claims for adjustment on paint, seats, upholstery and trim involve items on which opinions of the interested parties are largely involved, the dealer must secure the approval of the Zone Office in each case in advance before making Warranty Adjustments on these items beyond ninety (90) days or 4,000 miles.

(*2*) Since the life and service of spark plugs, oil filters, sealed beam lamp units, lamp bulbs, radio tubes, and radio vibrators are largely dependent upon the established manufacturing and trade practices involved in their design and production, the dealer must secure the approval of the Zone Office in each case in advance before making Warranty Adjustments on these items beyond ninety (90) days or 4,000 miles.

(*3*) With respect to certain accessories, namely, electric clocks, and seat covers, the dealer must have the approval of the Zone Office in each case in advance before making Warranty Adjustments beyond ninety (90) days or 4,000 miles.

(*4*) Since the general trade practice on batteries provides for a ninety (90) day or 4,000 miles Warranty and an adjustment policy service which extends additional protection to the owner for a specified number of months or miles, the extended period for Warranty Adjustments shall not apply to batteries.

(*5*) Since the established manufacturing and trade practice is to warrant stem wind clocks for a ninety (90) day or 4,000 mile period, Warranty Adjustments will be made on that basis only. Dealers wishing adjustments or repairs after this period may send the clock to the manufacturer for repair and return to the dealer for a fee.

B • Conditions.

(*1*) Except as otherwise provided in this subparagraph B in subparagraph (3) below, the Chevrolet dealer, replacing any defective part or accessory up to one (1) year or 12,000 miles pursuant to this policy, shall be paid or credited with his net cost for the part itself, and in addition, an amount for service work based upon the recommended Chevrolet Flat Rate Manual time allotments multiplied by one-half (½) of the labor rates related thereto, as agreed upon with Seller, which costs, allotments and rates are in effect at the time such work is performed.

(*2*) In the event that the dealer shall ship defective passenger car or truck parts which he has been authorized by the Zone Office to return to the destination specified by said Zone office, the dealer shall prepay the transportation charges and Chevrolet Motor Division will reimburse the dealer for such transportation charges paid by him thereon.

(*3*) In the event that a Chevrolet dealer is called upon by the original owner to make Warranty Adjustments on a Chevrolet passenger car sold by another authorized Chevrolet dealer (other than a dealer operating under the jurisdiction of the Servicing Dealer), the Chevrolet dealer making such Warranty Adjustments will be paid or credited the suggested WHOLESALE NET PRICE for parts, and the suggested List Price less twenty-five (25) per cent for accessories or their component parts, and an amount for service work based on the recommended Chevrolet Flat Rate Manual time allotment multiplied by ninety (90) per cent of the labor rates related hereto, as agreed upon with the Seller, which prices, allotments, and rates are in effect at the time such work is performed; provided, nevertheless, that such payment will be made only in the following cases:

[fol. 487]

487

(a) Where the authorized Chevrolet dealer who sold the car lacks the proper service facilities to make the Warranty Adjustment and a written authorization for such adjustment is provided by the Zone Office.

(b) Where the car cannot or should not be operated for mechanical or safety reasons, any authorized Chevrolet dealer, who is located nearer to the car than the Chevrolet dealer who sold the car, may make Warranty Adjustments to the extent necessary to restore the car to a driveable and safe condition;

(c) Where the original owner, after purchase of the car, has removed his residence to a point within the territory of the Servicing Dealer, which territory is located beyond the metropolitan area in which the dealer who sold his car is located;

(d) Where the original owner is a resident of the Servicing Dealer's territory and the car involved was sold by an authorized Chevrolet dealer located in a city or town more than fifty (50) highway miles distant from the city or town in which the Servicing Dealer is located;

(e) Where the original owner of a Chevrolet commercial car or truck within the standard "Manufacturer's Warranty" (90 days or 4,000 miles) qualifies under paragraphs "a" to "d" inclusive.

In all other cases where Warranty Adjustments are made on passenger cars sold by other authorized Chevrolet dealers (including any case where the passenger car was sold by another authorized Chevrolet dealer located in the same city or metropolitan area), the servicing dealer will be paid or credited his net cost for parts and an amount for service work based on the recommeded Chevrolet Flat Rate time allotment multiplied by one-half (½) of the labor rates related thereto, as agreed upon with Seller, which costs, allotments and rates are in effect at the time such work is performed.

(4) It is not intended that adjustments will be made covering any recognized maintenance work, such as adjustments for labor or material involved in the repair or replacement of parts due to normal wear or made necessary because of abnormal conditions of use or from neglect.

If there is any doubt in your mind regarding the proper classification of work, that is, as to whether it is maintenance work or work subject to adjustment, please communicate with your zone office.

(5) The decision of Chevrolet Motor Division shall be final and conclusive on any question in connection with Warranty Adjustments and the allowance to be made to reimburse the servicing dealer.

4 • WARRANTY ADJUSTMENT—Chevrolet Commercial Cars and Trucks.

Authorization for replacement of parts (except tires) and accessories on Chevrolet Commercial Cars and Trucks is limited by the provisions of the "Manufacturer's Warranty" (ninety (90) days or 4,000 miles from date of sale by the dealer). Warranty Adjustments made by the dealer within such period are subject to the condition set out in sub-paragraph (3) of Paragraph 3B hereof.

5 • POLICY ADJUSTMENTS.

A • If in the opinion of the Chevrolet Motor Division there are any items that should have consideration beyond the time and mileage limits established herein, your zone office will furnish you with a list of items with established time and mileage limits on each item on which the Dealer may make policy adjustments on Chevrolet passenger cars owned by the original purchaser without first securing written authorization from the zone office. The list will be furnished to you as soon as possible and may be from time to time revised, changed, or added to by Chevrolet Motor Division.

B • All policy adjustments made either after the expiration of the 12 month or 12,000 mile period or with respect to Chevrolet passenger cars owned by persons other than the original purchaser, require the prior written authorization of the zone office, and requests for such adjustments shall be submitted on Form GSD 17. Your attention is specifically directed to the fact that adjustments may be authorized in the event that defects show up which do not fall within any of the provisions of this bulletin, if, in the opinion of Chevrolet Motor Division, such adjustments should be made, but work in respect to such adjustments should not be performed until prior authorization therefor has been obtained from the zone office.

C • Any policy adjustments authorized under the provisions of Paragraph 4 will be subject to the conditions set out in Paragraph 3B hereof.

[fol. 488]

373

488

OWNER SERVICE POLICY

The Chevrolet Motor Division's Owner Service Policy is one of the most liberal in the automotive industry, and its function is designed to promote owner goodwill. The administration of the policy, however, is what counts. If the terms of the policy are not carried out by Chevrolet dealers or Chevrolet Motor Division, adverse reaction will be obtained, resulting in loss of owner goodwill.

The owner service policy is issued to every purchaser of a new car or truck. This policy outlines what the owner may expect from the Chevrolet dealers and through them from the factory. At the time of delivery of the new vehicle the owner service policy should be explained in detail to the new owner.

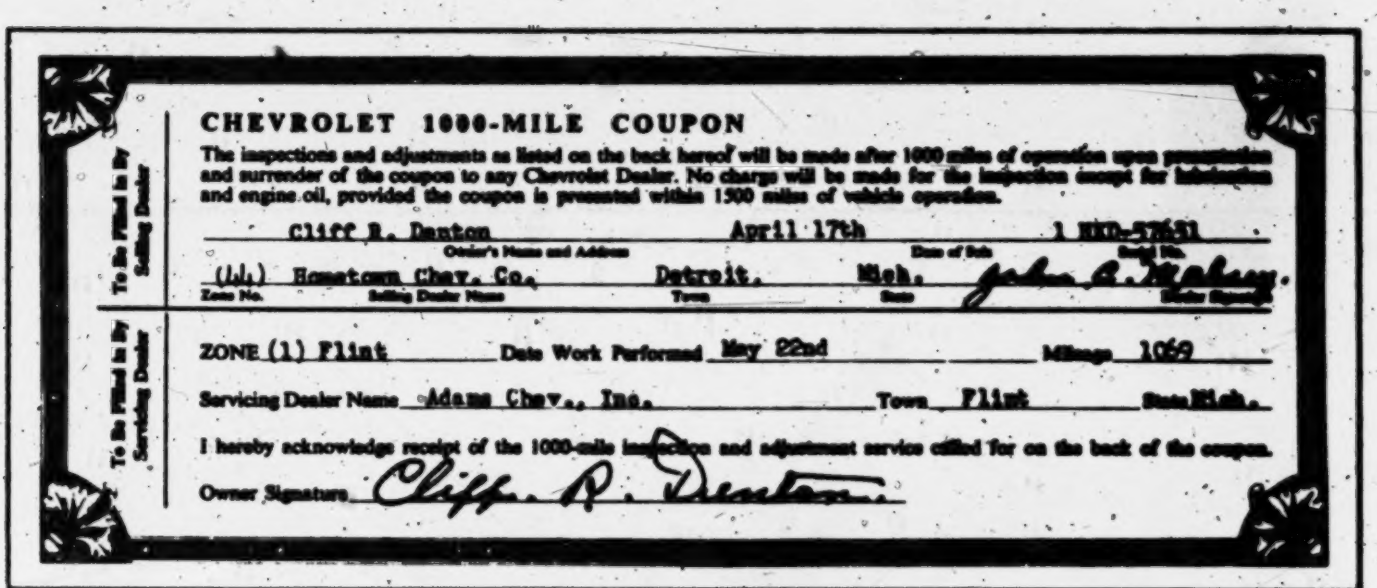
Owner goodwill is the most valuable asset a company can have and, over a period of years, Chevrolet dealers have enjoyed and benefited by this goodwill. In order to further enhance good customer relations with more Chevrolet owners, we are taking the forward step of modernizing The Owner Service Policy that has been in effect for many years.

In the past few years we have received an increasing number of complaints from new owners because the 1000 mile inspection could be obtained only from the selling dealer. It is for this reason that, effective with the introduction of the 1960 Chevrolet Passenger Cars and Trucks, Chevrolet announces a new Owner Service Policy with the provision that the 1000 mile inspection can now be secured from any Chevrolet dealer in the United States or Canada.

The following is the procedure for handling the new owner service policy:

1. The selling dealer is to type on each coupon the necessary information and sign his name at the time the new car is delivered to the owner.
2. When the selling dealer performs the 1000 mile adjustment, the coupon should be signed by the owner and detached from the Owner's Service Policy and placed in the dealer's file as a record of service rendered.
3. If the 1000 mile inspection is made by a dealer other than the selling dealer, the coupon should be signed by the owner, detached from the Owner Service Policy, and the necessary information filled in by the servicing dealer. The coupon should then be mailed to the Zone Office by the servicing dealer attached to an L&MR properly made out. The servicing dealer should not accept any coupons which have not been properly signed by the selling dealer. See figure 1.
4. Upon receipt of the coupon properly filled out in the Zone Office, credit will be issued to the servicing dealer on the L&MR, Form GSD 17, in the amount of $3.00, and the parts account of the selling dealer will be charged a like amount.

Chevrolet dealers are urged to honor the 1000 mile inspection coupon and to render any needed service under the terms of the Standard Manufacturer's Warranty as covered in the Policy on Warranty Adjustments and Policy Adjustments.



To Be Filled In By Selling Dealer

CHEVROLET 1000-MILE COUPON

The inspections and adjustments as listed on the back hereof will be made after 1000 miles of operation upon presentation and surrender of the coupon to any Chevrolet Dealer. No charge will be made for the inspection except for lubrication and engine oil, provided the coupon is presented within 1500 miles of vehicle operation.

Cliff R. Denton (Owner's Name and Address) — April 17th (Date of Sale) — 1 HKD-57651 (Serial No.)

(1d1) (Zone No.) Hometown Chev. Co. (Selling Dealer Name) — Detroit. (Town) — Mich. (State) — (Selling Dealer Signature)

To Be Filled In By Servicing Dealer

ZONE (1) Flint — Date Work Performed May 22nd — Mileage 1069

Servicing Dealer Name Adams Chev., Inc. — Town Flint — State Mich.

I hereby acknowledge receipt of the 1000-mile inspection and adjustment service called for on the back of the coupon.

Owner Signature Cliff. R. Denton

Figure 1—Chevrolet 1000 Mile Coupon

CANADIAN "OWNER SERVICE POLICY"
1000 AND 2000-MILE INSPECTION

Chevrolet Motor Division has a reciprocal agreement with General Motors Products of Canada, Limited, whereby Canadian Dealers will honor and perform the 1000-Mile Inspection on American Tourists' cars in accordance with detail given on the reverse side of the 1000-Mile Coupon.

General Motors Products of Canada, Limited, will credit the Servicing Dealer three dollars ($3.00) in United States dollars, and charge Chevrolet-Central Office, attaching the 1,000-Mile Inspection Coupon. Chevrolet-Central Office will credit General Motors Products of Canada, Limited, and charge the selling dealer for the same amount.

Chevrolet Dealers will honor and perform the 1000 or 2000-Mile Inspection as described on the reverse side of the Inspection Coupon for any Canadian Tourist that wished this service on his Chevrolet car or truck while traveling in the United States. Any Chevrolet Dealer in the United States who renders a 1000 or 2000-Mile Inspection to a Canadian Tourist will be credited on the following basis:

For the 1000-Mile Inspection the Servicing Dealer will be paid Three Dollars ($3.00) net, and for the 2000-Mile Inspection Eight Dollars ($8.00) net.

When a Chevrolet Dealer in the United States renders either one of these inspections he should make out and mail a GSD-17 L&MR—attaching the Inspection Coupon completely filled out and signed by the owner—to the Zone Service Manager under whose jurisdiction he is located.

POLICY ON GENERAL MOTORS OWNED CHEVROLET CARS

Warranty and Policy Adjustments on General Motors owned Chevrolet Cars will be handled through an Authorized Chevrolet Dealer, on the following basis:

1. General Motors owned Chevrolet Cars are defined as "those purchased for company car use by the Divisions and wholly owned subsidiaries of General Motors Corporation"—such as:

   General Motors Corporation
   General Motors Research
   General Motors Acceptance Corporation
   General Exchange Insurance Corporation
   Motors Insurance Corporation
   Motors Holding Division
   General Motors Fleet Sales Division
   United Motors Service
   Fisher Body Division
   All—General Motors, Car and Accessories Divisions

2. Warranty and Policy Adjustments will be made in accordance with the terms of the "Policy on Warranty Adjustments and Policy Adjustments."
3. Adjustments or repairs will be made by an authorized Chevrolet Dealer upon presentation of proof of General Motors ownership and date purchased.
4. Chevrolet Dealers performing Warranty or Policy Adjustments will submit to local Chevrolet Zone, GSD 17, L&MR, properly filled out with all information necessary, including the source and location where the car was purchased.
5. If L&MR is in line, the Zone will issue credit to the Dealer performing the work on the basis of parts, at Wholesale Net; and labor, flat rate less 10%.
6. The 1000-Mile Inspection will not be considered as a claim for Warranty Adjustment. If and when performed, it will be paid for by the General Motors Division.
7. This policy does not apply to cars owned by Chevrolet Motor Division and driven by representatives of Chevrolet.

[fol. 490]

POLICY ON CARS SOLD BY G. M. FOREIGN DISTRIBUTORS DIVISION

Purchasers of Chevrolet cars sold by the General Motors Foreign Distributors Division will be given an Owner's Service Policy.

The Owner's Service Policy will show the selling Dealer as General Motors Corporation, Foreign Distributors Division. Any warranty work performed by Dealers in the U.S.A. should be handled the same as on cars sold by domestic dealers on a tourist basis—which is 10 per cent discount on labor and wholesale net on parts. The Dealer performing the necessary warranty work will submit an L&MR GSD-17 to the Chevrolet Zone Office M. R. Room.

An Owner who purchases his car through the General Motors Overseas Operations (Foreign Distributors Division) will be entitled to receive the 1000-Mile Inspection free by any Chevrolet Dealer in the U.S.A. upon presentation and surrender of the coupon.

The Servicing Dealer will attach the 1000-Mile Coupon to the GSD-17, L&MR, and he will be credited in the amount of $3.00 for rendering this service.

375

490

POLICY ON UNIT REPLACEMENTS

It is the policy of Chevrolet Motor Division, General Motors Corporation, not to accept for credit, a complete unit that has been damaged as a result of a defect in one of the component parts of the unit.

Some of these units are a complete engine, transmission, rear axle, carburetor, generator, starting motor, distributor, horn, etc.

It is customary to replace only those parts which are defective along with parts damaged as a result of the defective part.

However, due to extenuating circumstances and/or the amount of damage to a unit, it might be advisable to replace a complete unit. Should such an occasion present itself, it will be necessary for you to receive written authorization from your Zone Service and Mechanical Manager before making the installation. A notation is to appear on the GSD 17, L&MR showing the authorization received from the Zone Office.

POLICY ON UNITS SOLD TO FEDERAL, STATE, COUNTY AND CITY GOVERNMENTS, ON DIRECT BIDS BY CHEVROLET MOTOR DIVISION

The Bidder warrants each new motor vehicle, chassis or part manufactured by it, including all equipment or accessories (except tires) supplied by it, to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to furnishing a new part or parts, to replace any part or parts which its examination shall disclose to its satisfaction to have been defective within one year after acceptance of such vehicle by the original purchaser or until such vehicle has been driven 4,000 miles, whichever event shall first occur.

The Bidder designates that such new part or parts will be furnished in exchange for defective parts at:

1. An authorized Chevrolet dealer's place of business in those instances where the part or parts need to be removed from or installed in an assembly or the vehicle.
2. Any Chevrolet Zone Warehouse where there is a Material Return Department where the part or parts previously have been removed from the vehicle or assembly by the purchaser.

This warranty shall not apply to any vehicle or part which shall have been repaired or altered in any way so as in the judgment of the Bidder to affect its stability and reliability, or which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied and all other obligations or liability on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

When it is necessary to make repairs or adjustments to Federal, State, County or City Government owned passenger cars or trucks (Provision 1 Special Warranty Clause) which were sold to the Federal, State, County or City Government on direct bid by Chevrolet Motor Division, during the special warranty period (12 months or 4,000 miles) and when such repairs or adjustments are made by an authorized Chevrolet dealer, the dealer performing the repairs shall submit a GSD 17 L&MR, containing all information, to the Zone Office.

The using Federal, State, County or City Agency or Department will furnish the Dealer the date of acceptance and/or the contract or bid number. The Dealer will furnish the Serial, Engine and Unit Numbers, Mileage, etc.

[fol. 491]

The dealer shall be reimbursed for the work performed on the basis of parts, at wholesale net (if supplied by dealer) and labor at Flat Rate less 10% (if work performed by dealer). The L&MR will be coded in the usual manner. It shall also contain the information that it covers a Federal, State, County or City Government passenger car or truck sold on a direct bid; also a notation "Parts at wholesale net and labor Flat Rate less 10%". The labor will be computed on this basis and extended in the 50% column. This policy does not apply to units sold by the dealers direct to the Federal, State, County or City Government.

At the present time, no unloading, servicing or periodical inspection is provided Federal Government by Chevrolet on direct bids. Certain bids to States, Counties and Cities will provide for the 1000 mile inspection to be given at no cost to the purchaser. In these cases an Owner Service Policy will be properly filled in, including the bid number, signed and issued by the Resident Comptroller.

491

NEW CAR AND TRUCK INSPECTION AND ADJUSTMENT FORM S&M 22

The New Car and Truck Inspection and Adjustment Report, is one of the finest tools that a Dealer can have to guide him in getting the New Car or Truck ready for delivery to the new owner.

The S&M 22 gives detailed instructions covering New Car Conditioning. It will be noted that the conditioning work is grouped by divisions to make it easy for the new car and truck "get-ready" mechanic to follow.

It also provides a guide for the inspector to follow when inspecting the car or truck after it has been conditioned for delivery.

This form is furnished in duplicate—the original (white sheet) is marked "Dealer Copy" for the dealer's file and the duplicate (buff sheet) is marked "Customer Copy" and is to be given to the owner.

With the report completely checked and signed, the purchaser of a new car and truck, in looking over the form, undoubtedly will be impressed with the care taken by the dealer to see that his new vehicle is delivered in the best possible condition mechanically and in appearance. See figure 2.

DEALER COPY

INSTRUCTIONS

Check all operations listed; perform adjustments necessary to make corrections.

NEW CAR INSPECTION AND ADJUSTMENT REPORT

Name John Doe Address 12310 Hamilton Phone FR 1-4000

Serial No. HEH-16966 Engine No. BA05-30697 Body Job No. P11189 Body Style 50-1069

Trim No. 171 Paint No. 428 Key No. 8271 R. O. No. 1703

GENERAL TIGHTENING	V	CLUTCH AND BRAKES	V	ELECTRICAL	V	ROAD TEST AND INSPECTION	V
Radiator mounting bolts	✓	Clutch pedal free travel	✓	Test battery specific gravity (if below 1.250 recharge)	✓	Performance of engine	✓
Bumper and bumper bracket	✓	Brake pedal to toe board clearance	✓	Fill battery	✓	Engine noise	✓
Front fender bolts	✓	Main cylinder (fill if necessary)	✓	Tighten battery terminals and ground strap	✓	Clutch operation	✓
Spring shackles and mounting	✓	Brake adjustment, service and parking	✓	Tighten electrical connections	✓	Gearshifting	✓
Muffler and tail pipe	✓			Cut-out closing 5.9 to 6.8 volts	✓	Operation of Automatic Transmission	✓
Shock absorber mountings	✓			Voltage regulator (7.0 to 7.7 volts)	✓	Steering	✓
Knee-action assembly to frame bolts	✓			Current regulator 31 to 40 amps.	✓	Service brake operation	✓
Steering gear to frame mounting bolts	✓	STEERING AND FRONT END		Operation of all lights	✓	Parking brake	✓
				Headlights aim	✓	Body squeaks and rattles	✓
BODY AND HOOD		Tighten pitman arm nut	✓			Inspect installation of all accessories	✓
Hood alignment	✓	Steering gear adjustment	✓			Check operation of radio and heater, and defroster controls	✓
Operation of hood lock	✓	Front wheel bearing adjustment	✓			Hood, door and deck lid fit	✓
Door and deck lid alignment	✓	Toe-in	✓	CONVERTIBLE MODEL		Condition of paint and upholstery	✓
Door and deck lid seals	✓						
Free operation of windows	✓			Lower and raise top	✓	WASH	
Free operation of door handles and locking device	✓			Inspect top brackets, joints and fasteners	✓	Wash and polish	✓
Operation of keys in all locks	✓	ENGINE		Fill pump reservoir with Hydraulic Brake Fluid		White sidewall tires, clean and remove protective coating	✓
Free operation of seat adjuster	✓						
Upholstery clean and free of damage	✓	Engine oil	✓				
Inspect finish	✓	Coolant in radiator	✓				
Install floor mats	✓	Tighten hose connections	✓				
Check tools	✓	Start engine to warm up	✓				
		Tighten manifold and exhaust	✓				
		Tighten cylinder head bolts	✓				
INSTRUMENTS AND CONTROLS		Distributor point dwell	✓	LUBRICATION			
		Ignition timing	✓				
		Adjust tappets (engine normalized)	✓	Lubricate car complete		O.K'd for Delivery	
Operation of all instruments	✓	Adjust idling (450 to 500 RPM)	✓	Check lubricant level in transmission and rear axle		Inspector A. L. Bennett	
Operation of choke, throttle and ventilator controls	✓	Fan belt adjustment	✓	Inflate tires to recommended pressure		Service Manager Roy Smith	
Windshield wiper operation	✓	Oil and water leaks	✓				

George Smart
Mechanic's O. K.

Figure 2—New Car Inspection and Adjustment Report S&M 22

[fol. 492]

377

4-92

[fol. 493]

IMPORTANCE OF GOOD CUSTOMER RELATIONS

Owner good will is of utmost importance to the Chevrolet Dealer and Chevrolet; therefore, too much emphasis cannot be placed on the importance of *Good Customer Relations*.

The three following factors play a very prominent part in a dealer's success if thoroughly understood and carried out.

1. The owner must be satisfied with the Chevrolet product if he is to become a repeat buyer. A dissatisfied owner means a loss of good will for the Chevrolet Dealer and Chevrolet.
2. The owner must have confidence in and be satisfied with the *Dealer's Service*, if he is to remain a satisfied customer. If an owner is satisfied with the Dealer's Service, he will be a steady service customer, and will influence his friends to become customers and Chevrolet boosters.
3. Good customer relations begin when the dealer delivers the new car or truck and explains the Owner Service Policy so that the owner will know and understand Chevrolet's, the Dealer's and his own responsibility for servicing the vehicle.

If owners understand the policies and are satisfied with the Chevrolet Product and like the service given by their Chevrolet Dealer they will become satisfied customers for Service and Parts and repeat buyers for Chevrolet products in the future.

The Chevrolet Dealer should welcome all complaints because they are an indicator of the status of customer relations in his dealership. When an owner complaint is received by Chevrolet, the Zone Service Manager sends the dealer involved a copy of the letter and a Customer Relations Report (GSD-637) partly filled out. Upon receipt of the owner's letter and report, the dealer should contact the owner immediately and bring the complaint to a conclusion fairly on the basis of the facts; he should then fill in the rest of the information on the Customer Relations Report, giving all the facts and information regarding the handling of the owner and what was done on the car or truck to satisfy the owner. This report is to be forwarded to the Zone Office within five (5) days. If an owner is on vacation, out of town or impossible to contact, the dealer should advise the Zone Office so they can put the complaint on pending. He should then follow up the owner and conclude the complaint as quickly as the owner or vehicle is available.

The faster a complaint can be closed, the easier it will be to satisfy the owner and keep him a booster for the Chevrolet Dealer and Chevrolet.

Chevrolet Dealers should give every consideration to tourists and owners who have moved into their community. They should treat these owners as though they had sold them the vehicle. Take care of these owners as you would want your owners taken care of under similar circumstances. Protect your future. See figure 3, page 12.

GSD 627
PRINTED U. S. A. GM 9-49

CUSTOMER RELATION REPORT

ZONE NO. 47

C. O. Complaint No. 41
Zone Complaint No. 89

Owner's Name John Doe
Owner's Address 1617 State
Handling Dealer City Chevrolet Sales
Selling Dealer City Chevrolet Sales

Date Received in Zone 4-1-50
Date Acknowledged to Owner 4-1-50
Address Hometown Texas
Address

OWNER'S COMPLAINT

1. Transmission jumps out of high
2. Door fit

(To be filled in by Zone Office)

THIS COMPLAINT SHOULD BE CLOSED BY 4-10-50
(To be filled in by Zone Office)

Serial No. 5 HKA-
Engine No. HAA48210
Body No. K-1047
Paint No.

Model Coupe
Mileage 4755
Date Purchased 1-30-50

Owner Contacted: 4-7-50 Where? Dealership
By Whom? J. Smith - T. L. Stone
Representative of Dealer (X) Chevrolet (X)
Was contact personal (X) or by phone ( )

WHAT WAS DONE TO SATISFY OWNER? (State facts in detail)

1. Aligned transmission and installed new detent springs per DR-70 Service Bulletin. Also installed new main drive gear and second and third speed clutch.
2. Adjusted both doors to correct fit in opening and adjusted lock mechanism to provide correct tension.

Was Owner Satisfied? Yes
(To be filled in by person contacting owner)

Who Absorbed Expense? Chevrolet
Date Complaint Closed 4-7-50
Number of Days to Close

Zone Service Manager

[fol. 494]

379

Figure 3—Customer Relation Report

494

PROCEDURE FOR SUBMITTING APPLICATION FOR CREDIT ON WARRANTY OR POLICY ADJUSTMENTS

When it becomes necessary to install any Parts or Accessories under the terms of the Standard Manufacturers Warranty or the Policy on Warranty Adjustments and Policy Adjustments, the Chevrolet dealer will submit Form GSD-17 L&MR for such Parts, Accessories and/or Labor to the Zone Material Return Room under which he operates.

The dealer will fill in by typewriter all spaces designated by the symbol "†" as indicated in the lower left hand corner of the L&MR.

Dealer will fill in accurately the Car Serial Number, Date Written, Zone Number, Car Owner Name, Car Owner's Complete Address, Repair Order Number, Delivery Date, Date Labor Performed and Mileage on all GSD-17 L&MRs. He will only fill in the unit number or numbers such as the transmission, rear axle and etc. if those particular units are affected.

The Dealer will fill in only "date parts sold," "date part replaced" and "accrued mileage" when the part or parts are returned for credit and were sold from the dealer's parts stock. The columns—"Part Number," "Part Name," "Quantity," "Dealer Net Price Each" and the four designated columns in the Labor Section are also to be filled in accurately.

When it is necessary for the dealer to perform labor on which the Flat Rate Schedule shows no operation number, the dealer will place a "T" in the column "Flat Rate Operation No." and show the actual time consumed in column headed "Flat Rate Time."

*All GSD-17 L&MRs and the material listed thereon, must be forwarded to the Zone M.R. Room within *Fifteen Days* from date of replacement of parts or accessories or labor performed. Separate L&MRs are to be written covering Fisher Body items. Chassis items, Complete Accessories, or parts of Accessories including Radio can be written on the same L&MR.

Show the Part, Trade Accessories or Radio Part Numbers of the defective material removed from the car. Part Numbers must be correct for the year and model of car or truck.

List parts used in each correction together, and show labor operation on same line as first part listed. If any other corrections are made on vehicle, list labor on next line below last part shown for first correction. See figure 4, page 16.

Occasionally, defective material replacements require no labor. In such case, show complete information with the exception that the labor section of the L&MR is left blank. However, a notation should be made in Labor section as to why no labor was necessary.

It is sometimes necessary to request credit for labor only. In such case, show complete information with the exception that the Parts Section is left blank.

Under certain conditions covering Warranty Adjustments and Policy Adjustments, special allowance will be credited to the dealer on the following basis: Labor at Flat Rate less 10%; Parts at suggested wholesale net, Accessories at list less 25% according to the current Flat Rate Schedule and the current Parts List Prices.

On all such L&MRs it will be necessary to show the Selling Dealer's Name and Address and indicate the reason for the special allowance. Where the above adjustments are made, dealers are to price such parts as are used at suggested wholesale net and type this amount in the blank column immediately to the left of "Dealer's Net Price"; also, type the following notation in the body of GSD-17 L&MR—"parts at suggested wholesale net."

Type in Flat Rate Labor charges for this type of adjustment at list less 10% in the column headed "50% Dealer Retail Price." Include the following notation in the body of the GSD-17 L&MR: "Labor List Less 10%." See figure 5, page 17.

When a GSD-17 L&MR is submitted by a dealer for paint adjustments, he will receive credit for paint supplies if credit is in order on the following basis: List Price less 40% of the paint or Duco as shown in the Flat Rate Time Schedule Book when claim is submitted by the selling dealer and List Price less 25% when claim is submitted by other than the selling dealer. See figures 6 and 7, pages 18 and 19.

The List Price of Paint or Duco as shown in the Flat Rate Time Schedule Book includes primer, filler, surfacer, thinner, color, masking tape and sandpaper.

In the event that the number of parts or trade accessories listed in the "Defective Parts Section" exceeds eight (8) items, the remaining items shall be listed on another L&MR marked "Page 2." On Page 2 the only information necessary is the car serial number, Dealer's Name, additional parts and proper signature.

[fol. 495]

380

495

Form GSD-17 L&MR is issued in eight (8) copies. These copies are distributed as follows:

All copies of the L&MR except the number eight (8) to be mailed direct to the M. R. Room, using large envelope. Do not fold L&MRs and do not separate documents or remove carbon.

The number 8 copy is the Dealer's copy and should be retained by him as a record of the transaction These copies should be filed in the Dealership in sequence according to the L&MR Number. Remove carbon between 7 and 8 copy only.

The Number 1 copy of all GSD-17 L&MRs is to be signed by the dealer or his authorized agent with ink or indelible pencil so that the signature will register on all copies.

The Dealer is to furnish the Zone the signatures authorized to sign Form GSD-17 L&MR on Form GSD-130 Dealer's signatures on L&MRs, Form GSD-17. See form, page 20.

SHIPMENT OF MATERIAL

When preparing a shipment of material to be returned for credit, the GSD-17T Listing Tag is to be used as a packing slip. All L&MR Numbers covering material to be returned are to be typed on this listing tag. Labor only L&MRs are not to be listed. See figure 8, page 20.

All material returned for credit is to be properly identified by attaching a GSD-43, "Returned Goods" tag completely filled in to one of each part contained in the shipment.

All shipments of service material returned to M. R. Rooms for credit are to be made the cheapest way, transportation prepaid.

When material is returned by freight, express or parcel post, the GSD-17T L&MR Listing Tag is to be placed in an envelope and placed in one of the containers, as a packing slip. This container is to be marked "Packing Slip Enclosed."

All copies of the L&MRs plus the GSD-17T Listing Tag must accompany the material if the defective material is delivered to the Zone M. R. Room by a Dealer or his representative.

ADVICE OF APPROVAL

When credit has been approved, the Dealer's parts account will be credited and the No. 1 copy of the GSD-17 L&MR will be forwarded to the dealer as a Credit Memorandum by the Accounting Department.

If Credit on L&MR has been refused by the Zone Office, the Dealer will be notified by the return of the No. 1 copy with a check mark shown on the face of the L&MR in space marked "Claim Rejected" at top center of page and also by code number at bottom of page marked "Item Coded "G".....

When partial credit has been allowed on a GSD-17 L&MR, the dealer will be notified by letter from the Zone Service Department of those items on which credit has been refused and the reasons for such refusals.

The reason for rejection will be indicated by the use of the following codes:

G-1. Car serial number of engine number, not listed or incorrect, or mileage not shown.
G-2. Date of sale or radio installation date not listed or incorrect.
G-3. No date labor performed, or no repair order number.
G-4. No transmission number, or no rear axle number, incorrect.
G-5. No body, style, paint, or trim number, or incorrect.
G-6. Parts not received.
G-7. Part not defective, or incorrect part.
G-8. Part received damaged—unable to test.
G-9. Beyond Warranty Period.
G-10. No operation number listed, or incorrect.
G-11. Flat rate time not listed, incorrect.
G-12. Flat rate hourly charge or Retail Price for Operation not listed, incorrectly.
G-13. Insufficient information listed.
G-14. Credit previously allowed on L&MR No.....
G-15. L&MR does not carry authorized signature.
G-16. Complete unit not returnable for credit.
G-17. New car conditioning or 1000-Mile inspection operation.
G-18. Over 15 days.
G-19. L&MRs must be typewritten.
G-20. Must be on separate L&MRs (See Important Points to be observed.)
G-21. Maintenance.

If the Dealer, upon receipt of the notification, still feels that he is entitled to credit, the claim may be reopened by submitting within 30 days a new set of L&MRs, which are cross-referenced to the original L&MRs by putting the notation in the upper right-hand corner "Rewritten from L&MR Number...," together with a letter of transmittal containing any additional information that the Dealer feels may aid in obtaining credit. In such cases, the letter of transmittal should also refer to the "L&MR Number," appearing on the L&MR on which credit was refused.

[fol. 496]

381

496

IMPORTANT POINTS TO BE OBSERVED

1. In order to secure reimbursement for transportation charges on Material Returned, the original prepaid freight or express bill must be attached to the GSD-17 L&MR, covering the material in the shipment. If the shipment is made by Parcel Post, credit will be allowed to the value of stamps affixed on package.

2. Separate L&MRs covering material and labor should be made on all Fisher Body repairs.

   Any material and/or labor for adjustments on hoods, front fenders, front and rear gravel deflectors, windshield wiper blades and arms, glove compartment light switches and all other chassis items should be listed on separate GSD-17 L&MRs and not included with Fisher Body items. Adjustments on Station Wagon bodies and Sedan Delivery bodies are to be listed as Fisher Body items.

3. Complete Accessories or parts of accessories, including Radio Parts and Labor, can be written on the same set of L&MRs.

4. Do not type in the spaces which have the asterisk (*) (**) in them.

5. In any correspondence relative to L&MRs, please refer to the L&MR number of the GSD-17 in question.

6. Attach GSD-725 on all major paint adjustments.

7. Attach Sublet Bills in all cases where work was not performed by an Authorized Chevrolet Dealer.

8. If the quantity of a part is more than one, show only the "price each" in the "Dealer Net Price" column.

9. Applications for adjustments will be returned to the dealer if information called for is not complete and where part numbers or prices are incorrect.

10. On spot refinish and touch-up operations where time is estimated, the paint price should be based on 15c for each 3 hours of refinishing time.

Application for Adjustment and Credit Reservation, Warranty & Policy, Material & Labor

CHEVROLET MOTOR DIVISION L.&M.R. No.

GENERAL MOTORS CORPORATION

Los Angeles, California
† ZONE LOCATION

C. M. No. ** AND DATE

DEALER NAME AND ADDRESS: Hometown Chevrolet, 123½ Main Street, Hometown, California

CREDIT TO †

CAR SERIAL NO. † 20 HKA 123½

DATE WRITTEN † 3-26-50 R. S. NO. *

R. S. DATE * ATTACHED TO L & M R * SEQUENCE NO.

DATE L & M R * RECEIVED DATE * WORKED CLAIM * REJECTED ☐ ZONE NO. † 20 DEALER * CODE NO. ZONE L & M R * SEQUENCE NO.

CAR OWNER † John Doe | ENGINE NO. † HAA 1524 | BODY TYPE † 2 Dr. Sedan | TRANS. NO. † HB 1021

ADDRESS † 1233 Palmer | REPAIR ORD. NO. † 6789 | BODY STYLE NO. † | REAR AXLE NO. † HA 121

CITY † Hometown | DELIVERY DATE † 2-3-50 | BODY NO. † | DATE PART SOLD †

STATE † California | DATE LABOR PERFORMED † 3-25-50 | TRIM NO. † | DATE PART REPLACED †

MILEAGE † 1524 | PAINT NO. † | ACCRUED MILEAGE †

DEALER'S AUTHORIZED HOURLY FLAT RATE $ † 3.00

PARTS							LABOR					
PART NUMBER †	PART NAME †	PART CRED. CODE *	QUA. †		DEALER NET PRICE †	EXT. **	FLAT RATE OPER. NO. †	FLAT RATE TIME †	DEALER RETAIL PRICE FOR OPER. †	50% DEALER RETAIL PRICE †	LABOR CRED. CODE *	COMPLAINT CODE *
609741	Gear		1		5.55		7-15	5.3	15.90	7.95		
3689488	Gasket		1		.45							
3663166	Seal		1		.38		4-10	.9	2.70	1.35		
393017	Gasket		1		.09							
3681189	Shoe		2		.83		?	.7	2.10	1.05		
1516280	Gauge		1		1.80		12-230	.9	2.70	1.35		
1516061	Gasket		1		.03							

GIVE DETAILS OF FAILURE † (1) Transmission jumps out of High Gear replaced M.D. Gear and aligned Transmission. (2) L.R. Axle Seal leaking, damaged shoes. (3) Replaced Gas Gauge tank unit; shows full when half full.

	AMOUNT
TOTAL PARTS **	
TOTAL LABOR **	
TRANSP. ALLOWANCE *	
CHARGES *	
NET CREDIT TO DEALER **	

FILL IN FOR SPECIAL ALLOWANCE † ☐ ZONE AUTHORIZATION ☐ TOURIST ☐ CHANGE OF RESIDENCE ☐ OTHER

SELLING DEALER ADDRESS CITY STATE

DEALERS SIGNATURE J. B. Truman

APPROVED ZONE SERVICE MGR. OR ASSISTANT

DATE APPROVED

* FILLED IN BY M. R. INSPECTOR
** FILLED IN BY ACCOUNTING DEPT.
† FILLED IN BY DEALER.

ITEMS CODED "G_____" ARE REJECTED EXPLANATION WILL BE FOUND IN "MANUAL OF SERVICE DEPARTMENT POLICIES AND PROCEDURES".

[fol. 498]

Figure 4—Sample L&MR, When More Than One Operation Is Performed

Application for Adjustment and Credit Memorandum, Warranty & Policy, Material & Labor

CHEVROLET MOTOR DIVISION L. & M. R. No.

GENERAL MOTORS CORPORATION

Oklahoma City
† ZONE LOCATION

C. M. No. ** AND DATE

DEALER'S NAME AND ADDRESS: Carson Chevrolet Co.
6754 Marshall
Amarillo, Texas

CREDIT TO †

CAR SERIAL NO. † 3 HA 1396

DATE WRITTEN † 3-14-50 R. S. NO. *

R. S. DATE * ATTACHED TO L & M R * SEQUENCE NO.

DATE L & M R * RECEIVED DATE * WORKED CLAIM * REJECTED ☐ ZONE NO. † 23 DEALER * CODE NO. ZONE L & M R * SEQUENCE NO

CAR OWNER † John S. Adams ENGINE NO. † HAA 1706 BODY TYPE † TRANS. NO. † HA 1391

ADDRESS † 486 Dunes
CITY † Riverton
STATE † Illinois

REPAIR ORD. NO. † 1879
DELIVERY DATE † 1-9-50
DATE LABOR PERFORMED † 3-13-50
MILEAGE † 3340

BODY STYLE NO. †
BODY NO.
TRIM NO.
PAINT NO.

REAR AXLE NO. †
DATE PART SOLD †
DATE PART REPLACED †
ACCRUED MILEAGE †

DEALER'S AUTHORIZED HOURLY FLAT RATE $ † 2.50

PARTS							LABOR					
PART NUMBER †	PART NAME †	PART CRED. CODE *	QUA †		DEALER NET PRICE †	EXT **	FLAT RATE OPER. NO. †	FLAT RATE TIME †	DEALER RETAIL PRICE FOR OPER. †	USE DEALER RETAIL PRICE †	LABOR CRED. CODE *	COMPLAINT CODE *
605020	Clutch		1	7.39			7-15	5.3	13.25	11.92		
609741	Gear		1	6.94			?	1.	2.50	2.25		
3694977	Shim Unit		1	.11								
3689488	Gasket		1	.45								
Parts at Suggested Wholesale Net							Labor List Less 10%					

GIVE DETAILS OF FAILURE † Overhauled Transmission because Clutch Gear and Main Drive Gear Worn. Dial Ganged Housing also. This work done because of Transmission jumping out of High Gear.

	AMOUNT
TOTAL PARTS **	
TOTAL LABOR **	
TRANSP. ALLOWANCE *	
CHARGES *	
NET CREDIT TO DEALER **	

FILL IN FOR SPECIAL ALLOWANCE † ☐ ZONE AUTHORIZATION ☒ TOURIST ☐ CHANGE OF RESIDENCE ☐ OTHER

SELLING DEALER Winters Chevrolet Co ADDRESS CITY Springfield STATE Illinois

DEALERS SIGNATURE H. W. Martin

APPROVED ZONE SERVICE MGR. OR ASSISTANT

DATE APPROVED

*FILLED IN BY M. R. INSPECTOR
**FILLED IN BY ACCOUNTING DEPT.
†FILLED IN BY DEALER.

ITEMS CODED "S_____" ARE REJECTED. EXPLANATION WILL BE FOUND IN "MANUAL OF SERVICE DEPARTMENT POLICIES AND PROCEDURES".

[fol. 499]

384

Figure 5—Sample L&MR for Special Allowance

499

Application for Adjustment and Credit Reservation, Warranty & Policy, Material & Labor

CHEVROLET MOTOR DIVISION L & M.R. No.

GENERAL MOTORS CORPORATION
Detroit, Michigan
† ZONE LOCATION

C. M. No. ** AND DATE

DEALER'S NAME AND ADDRESS
CREDIT TO
Quality Chevrolet Company
1943 State Street
Detroit, Michigan

CAR SERIAL NO. † 1 HKA 8711

DATE WRITTEN † 1-13-50 R. S. NO. *

R. S. DATE * ATTACHED TO L & M R * SEQUENCE NO.

DATE L & M R * RECEIVED DATE * WORKED CLAIM * REJECTED ☐ ZONE NO. † 44 DEALER * CODE NO. ZONE L & M R * SEQUENCE NO.

CAR OWNER † Craig O. Martin ENGINE NO. † KAA 52872 BODY TYPE † 4 Door TRANS NO. †

ADDRESS † 3463 LeRoy
CITY † Detroit
STATE † Michigan

REPAIR ORD. NO † 7884
DELIVERY DATE † 1-12-50
DATE LABOR PERFORMED † 1-12-50
MILEAGE † New

BODY STYLE NO. † 50-1006
BODY NO. † 765
TRIM NO. † 171
PAINT NO. † 425

REAR AXLE NO. †
DATE PART SOLD †
DATE PART REPLACED †
ACCRUED MILEAGE †

DEALER'S AUTHORIZED HOURLY FLAT RATE $ † 3.25

PARTS

PART NUMBER †	PART NAME †	PART CRED CODE *	QUA. †		DEALER NET PRICE †	EXT. **
	Duco List Less 40%					

LABOR

FLAT RATE OPER NO. †	FLAT RATE TIME †	DEALER RETAIL PRICE FOR OPER. †	50% DEALER RETAIL PRICE †	LABOR CRED CODE *	COMPLAINT CODE *
1-716	1.8	5.85	2.93		
Duco		1.30	.78		
1-206	1.8	5.85	2.93		
Duco		1.10	.66		
1-723	1.4	4.55	2.28		
Duco		1.10	.66		
?	.6	1.95	.98		
Duco		.30	.18		

GIVE DETAILS OF FAILURE † Paint very thin in several places on R.F. Door, Quarter Panel and R.R. Door. Primer showing through had to refinish. Touch up Rear Compartment Lid, Paint Chipped.

	AMOUNT
TOTAL PARTS **	
TOTAL LABOR **	
TRANSP. ALLOWANCE *	
CHARGES *	
NET CREDIT TO DEALER **	

FILL IN FOR SPECIAL ALLOWANCE † ☐ ZONE AUTHORIZATION ☐ TOURIST ☐ CHANGE OF RESIDENCE ☐ OTHER

SELLING DEALER ADDRESS CITY STATE

DEALERS SIGNATURE L. B. Wills

APPROVED ZONE SERVICE MGR. OR ASSISTANT

DATE APPROVED

* FILLED IN BY M. R. INSPECTOR.
** FILLED IN BY ACCOUNTING DEPT.
† FILLED IN BY DEALER.

ITEMS CODED "G_____" ARE REJECTED EXPLANATION WILL BE FOUND IN "MANUAL OF SERVICE DEPARTMENT POLICIES AND PROCEDURES".

[101.500]

Figure 6—Sample L&MR for Paint Adjustment

385

500

Application for Adjustment and Credit Memorandum, Warranty & Policy, Material & Labor

CHEVROLET MOTOR DIVISION L.&M.R. No.

GENERAL MOTORS CORPORATION
Detroit, Michigan
ZONE LOCATION

C. M. No. ** AND DATE

DEALERS NAME AND ADDRESS / CREDIT TO: Larsen Chevrolet Co.
8801 Elmcrest Avenue
Detroit, Michigan

CAR SERIAL NO. 14 HKB 12401

DATE WRITTEN 2-20-50 R. S. NO. *

R. S. DATE * ATTACHED TO L & M R * SEQUENCE NO.

DATE L & M R * RECEIVED ____ DATE * WORKED ____ CLAIM * REJECTED ☐ ZONE NO. 44 DEALER * CODE NO. ____ ZONE L & M R * SEQUENCE NO. ____

CAR OWNER: Thomas L. Owen | ENGINE NO.: HAA 92704 | BODY TYPE: 4 Door | TRANS NO.:

ADDRESS: 437 Dacca Avenue | REPAIR ORD. NO.: 9746 | BODY STYLE NO.: 50-1069 | REAR AXLE NO.:
CITY: New York | DELIVERY DATE: 2-3-50 | BODY NO.: 2940 | DATE PART SOLD:
STATE: New York | DATE LABOR PERFORMED: 2-20-50 | TRIM NO.: 171 | DATE PART REPLACED:
MILEAGE: 972 | PAINT NO.: 429 | ACCRUED MILEAGE:

DEALER'S AUTHORIZED HOURLY FLAT RATE $: 3.25

PARTS							LABOR					
PART NUMBER	PART NAME	PART CRED. CODE *	QUA.		DEALER NET PRICE	EXT. **	FLAT RATE OPER NO.	FLAT RATE TIME	DEALER RETAIL PRICE FOR OPER	DEALER RETAIL PRICE	LABOR CRED. CODE *	COMPLAINT CODE *
							1-56	1.1	3.60	3.24		
							Duco		1.10	.83		
							1-903	1.7	5.55	4.99		
	Labor List Less 10%						Duco		1.50	1.13		
	Duco List Less 25%						1-201	.9	2.95	2.65		
							Duco		.45	.34		

GIVE DETAILS OF FAILURE † Paint peeling on Roof Panel, Deck Lid and Quarter Panel. There was dirt under paint, necessary to refinish to correct.

	AMOUNT
TOTAL PARTS **	
TOTAL LABOR **	
TRANSP. ALLOWANCE *	
CHARGES *	
NET CREDIT TO DEALER **	

FILL IN FOR SPECIAL ALLOWANCE † ☐ ZONE AUTHORIZATION ☒ TOURIST ☐ CHANGE OF RESIDENCE ☐ OTHER

SELLING DEALER Larsen Chevrolet Co. ADDRESS 7391 Cortland CITY New York STATE New York

DEALERS SIGNATURE H. E. Webb

APPROVED ZONE SERVICE MGR. OR ASSISTANT

DATE APPROVED

* FILLED IN BY M. R. INSPECTOR
** FILLED IN BY ACCOUNTING DEPT.
† FILLED IN BY DEALER.

ITEMS CODED "G ____" ARE REJECTED EXPLANATION WILL BE FOUND IN "MANUAL OF SERVICE DEPARTMENT POLICIES AND PROCEDURES".

[fol. 501]

Figure 7—Sample L&MR for Paint on Special Allowance

386

501

DEALER'S AUTHORIZED SIGNATURE FORM GSD-130

So that dealers can furnish Chevrolet with the signatures and titles of those persons they have authorized to sign documents, Chevrolet has provided FORM GSD-130 Dealer's Authorized Signature Form.

This form is to be filled in by the dealer giving the "Dealer Name" and "Location."

The signatures authorized and the title of the person are to be placed in the spaces provided. The dealer will then sign the form and forward it to the Zone M. R. Room where it will be filed for ready reference.

Below is a sample form to illustrate how it is to be filled out in detail.

DEALER'S AUTHORIZED SIGNATURES ON L&MRS, FORM GSD-17

DEALER NAME Hometown Chevrolet LOCATION Detroit, Mich.

DEALER CODE NO.* 134 DEALER'S AUTHORIZED HOURLY FLAT RATE* 2.75

	(SIGNATURE)	(TITLE)
1.	Fred W. Denton	Service Manager
2.	Fred J. Smith	Parts Manager
3.	Martin Volk	Accountant
4.		

DATE May 15, 1950 SIGNED: F. J. Smith (DEALER'S SIGNATURE)

NOTE: ALL APPLICATIONS FOR ADJUSTMENT AND CREDIT MEMORANDUM FORM NO GSD-17, TO BE SIGNED (NO 1 COPY WITH INDELIBLE PENCIL SO THE SIGNATURE WILL REGISTER ON ALL COPIES) BY DEALER OR SOMEONE AUTHORIZED BY THE DEALER. UNDER NO CIRCUMSTANCES WILL APPLICATIONS FOR ADJUSTMENT AND CREDIT MEMORANDUM BE ACCEPTED IF SIGNED WITH A RUBBER STAMP OR BY ANY OTHER PERSON THAN THOSE LISTED ABOVE. COMPLETE NEW CARD MUST BE SUBMITTED BY DEALER TO DELETE OR ADD TO ABOVE AUTHORIZED SIGNATURES. SIGNATURES OTHER THAN THOSE APPEARING ON LATEST GSD-130 WILL NOT BE ACCEPTED ON L&MRS.

GSD 130 REV. 3-50 *TO BE FILLED IN BY M. R. DEPARTMENT

GSD 17-47

L M R LISTING TAG

This shipment contains material listed on the following L & M R's

LIST	L & M R NUMBER
705207	705215
705208	705216
705209	705217
705210	705218
705211	705219
705212	705220
705213	705221
705214	705222

DEALER'S NAME Hometown Chevrolet

ADDRESS Detroit, Mich.

[fol. 502]

387

Figure 8—Sample L&MR Listing Tag

502

POLICY ON RADIO

Passenger Car Radio Warranty and Policy on Warranty and Policy Adjustments are the same as the Passenger Car Warranty including tourist privilege, 12,000 miles or 12 months whichever occurs first.

Truck Radio Warranty and Policy on Warranty Adjustments and Policy Adjustments are the same as the Truck Warranty, 4,000 miles or 90 days whichever event occurs first.

All Dealers will submit GSD-17 L&MR to the M. R. Room covering adjustments made on radios or parts thereof, the same as for adjustments made covering any other items on the cars or trucks. See figure 9, page 22.

Complete defective radios or antenna are not returnable for credit. Allowance for Warranty Labor Repairs will be made on the following basis only:

Those dealers that do not have radio service and are subletting radio repairs, are to have radios in warranty repaired at the radio shop of their choice and pay for the labor and parts. They in turn can submit a GSD-17, L&MR for same and will be reimbursed for labor and parts on the basis as outlined below.

RADIO LABOR FLAT RATE OPERATION NUMBERS AND LABOR ALLOWANCES

Operation No. 14-300	Minor Radio Repairs, on or off the car, covers the replacement of one or more tubes, vibrator, dial light or any combination of tubes, vibrator, or dial light.	
	Labor $2.00	**Dealer Net Labor $1.00**
Operation No. 14-302	Sub Major Radio Repairs, covers operation No. 14-300 and/or the soldering of loose wires or broken connections, eliminating shorts, or alignment of radio.	
	Labor $3.00	**Dealer Net Labor $1.50**
Operation No. 14-304	Major Radio Repairs, covers operation No. 14-302 and/or the replacement of condensers, resistors, coils, chokes, any type transformers, volume or tone controls, tuning units, dial parts, speakers, sockets, switches	
	Labor $5.00	**Dealer Net Labor $2.50**
Operation No. 14-306	Antenna Rod covers replacement of antenna rod assembly.	
	Labor $1.80	**Dealer Net Labor $ .90**
Operation No. 14-308	Antenna Lead-In, covers replacement of antenna lead-in.	
	Labor $1.50	**Dealer Net Labor $ .75**
Operation No. 14-310	Removal and reinstallation of radio, for Warranty Repairs, Chevrolet radios that have been installed on car and become defective during the Warranty Period (90 days or 4000 miles) and requiring a Major or Sub-Major radio repair, dealers can make application for labor for the removal and reinstallation of the radio on Form GSD-17, L&MR	
	Labor $2.00	**Dealer Net Labor $1.00**
Operation No. 14-312	Covers the repair or replacement of a rear seat speaker only.	
Operation No. 14-310	Does not apply to this operation.	
	List $3.00	**Dealers Net $1.50**
Operation No. 14-314	Covers the repair or replacement of rear seat speaker switch assembly.	
Operation No. 14-310	Does not apply to this operation.	
	List $2.00	**Dealers Net $1.00**

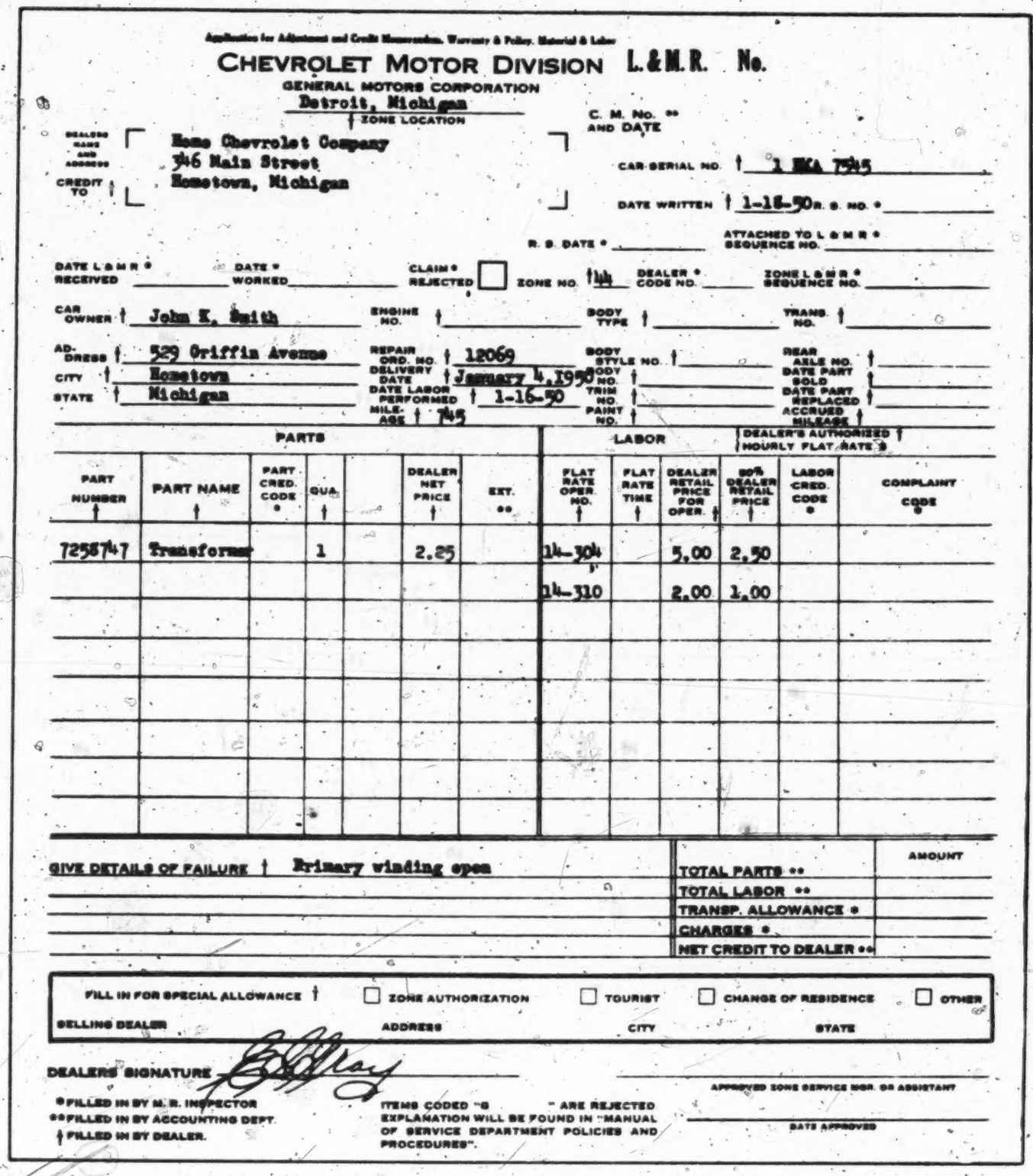
OPERATIONS NOT COVERED BY WARRANTY

1. Testing or replacing distributor suppressor.
2. Testing or replacing Static Collectors.
3. Testing or correcting any faulty radio, or antenna installations.
4. Adjusting antenna compensating condenser, or setting of push buttons.
5. The labor involved in making the above is not included in the Warranty. All charges should be made to the dealer making the original installation.

[Fol. 503]

388

503



Application for Adjustment and Credit Memorandum. Warranty & Policy, Material & Labor

CHEVROLET MOTOR DIVISION L. & M. R. No.

GENERAL MOTORS CORPORATION
Detroit, Michigan
† ZONE LOCATION

C. M. No. ** AND DATE

DEALER'S NAME AND ADDRESS: Home Chevrolet Company, 346 Main Street, Hometown, Michigan
CREDIT TO †

CAR SERIAL NO. † 1 HKA 7545
DATE WRITTEN † 1-18-50 R. S. NO. *
R. S. DATE * ATTACHED TO L & M R * SEQUENCE NO.

DATE L & M R * RECEIVED | DATE * WORKED | CLAIM * REJECTED ☐ | ZONE NO. †44 | DEALER * CODE NO. | ZONE L & M R * SEQUENCE NO.

CAR OWNER † John K. Smith | ENGINE NO. † | BODY TYPE † | TRANS. NO. †
AD-DRESS † 529 Griffin Avenue | REPAIR ORD. NO. † 12069 | BODY STYLE NO. † | REAR AXLE NO. †
CITY † Hometown | DELIVERY DATE † January 4, 1950 | BODY NO. † | DATE PART SOLD †
STATE † Michigan | DATE LABOR PERFORMED † 1-16-50 | TRIM NO. † | DATE PART REPLACED †
MILE-AGE † 745 | PAINT NO. † | ACCRUED MILEAGE †

PARTS							LABOR					DEALER'S AUTHORIZED † HOURLY FLAT RATE $
PART NUMBER †	PART NAME †	PART CRED. CODE *	QUA. †		DEALER NET PRICE †	EXT. **	FLAT RATE OPER. NO. †	FLAT RATE TIME †	DEALER RETAIL PRICE FOR OPER. †	50% DEALER RETAIL PRICE †	LABOR CRED. CODE *	COMPLAINT CODE *
725747	Transformer		1		2.25		14-304		5.00	2.50		
							14-310		2.00	1.00		

GIVE DETAILS OF FAILURE † Primary winding open

	AMOUNT
TOTAL PARTS **	
TOTAL LABOR **	
TRANSP. ALLOWANCE *	
CHARGES *	
NET CREDIT TO DEALER **	

FILL IN FOR SPECIAL ALLOWANCE † ☐ ZONE AUTHORIZATION ☐ TOURIST ☐ CHANGE OF RESIDENCE ☐ OTHER

SELLING DEALER | ADDRESS | CITY | STATE

DEALERS SIGNATURE E. E. Hay

APPROVED ZONE SERVICE MGR. OR ASSISTANT

DATE APPROVED

*FILLED IN BY M. R. INSPECTOR
**FILLED IN BY ACCOUNTING DEPT.
†FILLED IN BY DEALER.

ITEMS CODED "G " ARE REJECTED EXPLANATION WILL BE FOUND IN "MANUAL OF SERVICE DEPARTMENT POLICIES AND PROCEDURES".

[fol. 504]

Figure 9—Sample L&MR for Radio Repairs

389

504

INSTRUCTIONS ON RETURN OF DEFECTIVE NEW PARTS

(a) Before Installation.

See "Master Parts Catalog" for instructions on how to return this material.

New parts being returned due to damage or faulty packing, careless handling, shipped "short" certain component parts, or incorrectly packaged should be returned in accordance with instructions in booklet "Dealer Procedure For Handling Transportation Claims."

(b) After Installation.

After installation, but before vehicle has been delivered to owner, new parts claimed defective are to be written on Form GSD-17, L&MR, and handled in the same manner as if part had been installed in production. Material to be returned to the M. R. Room in the usual manner.

(c) New Accessories.

New Accessories claimed to be defective not damaged either before or after installation in a car or truck are to be returned on Form GSD-17 to the M. R. Room in the usual manner.

MAINTENANCE WORK

The types of work listed are considered as maintenance and, therefore, are not subject to credit on an L&MR.

BRAKES—Pedal, linkage and shoe adjustment. Bleeding, flushing and filling of system, where not made necessary due to a defective part.

ENGINE TUNE-UP—Cleaning and adjusting spark plugs, points, carburetor, air cleaner, valve adjustment, tightening cylinder head, cleaning fuel pump, throttle and choke adjustment. Grind valves and clean carbon.

LUBRICATION—General lubrication including seasonal changes.

TIGHTENING—General tightening of all bolts, studs, nuts, etc., made necessary due to car operation—i.e., engine mounting, body bolts, spring shackles, etc.

STEERING—Gear adjustment, linkage and wheel bearing adjustment, wheel balancing, front end alignment.

CLUTCH—Pedal adjustment.

ELECTRICAL—Adjusting voltage regulator, headlamps and battery terminals; maintenance of battery, generator and starting motor commutators and brushes, wiring and connections.

COOLING—Radiator flushing, adjusting fan belt.

FUEL SYSTEM—Cleaning and tightening of gas lines, tank and connections.

SHOCK ABSORBERS—Filling and cleaning.

FINISH—Any repairs due to causes other than factory responsibility, i.e., stone chips, abuse, harsh polishes, road surfacing materials, etc.

HARDWARE—Glass broken by abuse.

ALIGNING—The alignment of doors, hood, etc., unless such condition exists at time of delivery or is found at the 1000-Mile Inspection is most probably the results of abuse or accident.

[fol. 505]

PRODUCT INFORMATION REPORT—FORM GSD-541

This form is furnished to the dealers by the Zone Office. Form GSD-541 will originate in the dealership. It is to be made up from the repair order covering the failure and must be legible.

Each report must be filled out completely, giving all information called for. The car serial number, mileage, date of sale, model, body type, date and repair order number must be on all reports. In case of trouble with transmission, rear axle, body or other units, it is necessary that unit numbers with their letter prefix be recorded. When reporting body failures, body number, job number, paint number and trim number should all be recorded.

When the report covers a truck, the type body, if tractor with semi-trailer and average gross load, should be recorded.

Under the heading of "Owner's Report" should be recorded the owner's story of what he thinks is wrong. In the space below the caption "What Did You Find," the Dealer's Service Manager should state what he found wrong and his diagnosis of the cause of failure. The Dealer's Service Manager should describe the measures taken to correct the failure in the area following the title "Describe Corrective Work." The Dealer's Service Manager should indicate with a check mark whether or not he has

505

reported this condition previously. Under "Remarks," he should indicate the seriousness of the failure and any other comments that he may have to make. The Dealer's Service Manager is to mail the original to the Zone Office within 24 hours after the failure is corrected and retain a copy in his own files for future reference.

The GSD-541 reports furnish Chevrolet with valuable product information. The more complete the information is the more valuable it is; therefore, the importance of the GSD-541 reports is in the quality of the reports and not in the quantity.

The Dealer's Service Manager should send into the Zone Office a 541 completely filled out with accurate information as soon as he finds anything wrong with the product, whether it is within or beyond the Warranty Period. This gives Chevrolet valuable information that will help in building better products.

A product with a good reputation is much easier for dealers to merchandise than one with a bad reputation. Dealers should make out and mail into the Zone Office, quality GSD-541 reports so that Chevrolet can continue to produce the highest quality products. See figure 10.

PRODUCT INFORMATION REPORT
(CONVENIENT MODEL GSD.V)

C. O. _____ A. P. _____
CODE NO. _____
ZONE NO. _____

DATE April 20, 1950 REPAIR ORDER NO. 1705 SERIAL NO. 1HEC-10866
LETTERS PREFIX AND ENGINE NO. BAD-306875
DEALER Hometown Chevrolet MILEAGE 1109
Detroit Michigan BODY TYPE 50-1069
OWNER LETTERS PREFIX AND REAR AXLE NO.
12310 Hamilton Detroit Michigan LETTERS PREFIX AND TRANSMISSION NO.
BODY NO. JOB NO.
DATE OF SALE March 18, 1950 PAINT NO. TRIM NO.
IF 1½ TON TRUCK STATE TYPE BODY—TRACTOR OR SEMI-TRAILER AND AVERAGE GROSS LOAD

OWNER'S REPORT:— Knock in motor. Tappets noisy.

WHAT DID YOU FIND? We found a broken valve lifter in number 4 cylinder. #3 and #4 cylinder intake and exhaust valve lifters improperly adjusted.

DESCRIBE CORRECTIVE WORK Replaced broken lifter. Checked all valve lifters for adjustment and adjusted as necessary.

HAVE YOU REPORTED THIS CONDITION BEFORE? YES NO

REMARKS Engine now quiet--operates normally.

SIGNED J. E. Jones
SERVICE REPRESENTATIVE

INSTRUCTIONS: The CAR SERIAL NUMBER, ENGINE SERIAL NUMBER, MILEAGE, TYPE OF TRANSMISSION, USED FOR WHAT PURPOSE, SHOULD BE GIVEN ON ALL REPORTS. In case of trouble with TRANSMISSION, AXLE, BODY or OTHER UNITS, it is necessary that THAT NUMBER be recorded. Make one report for each car or truck you experience trouble with. All defective material removed should be shipped to your Zone Warehouse immediately. All supporting evidence, such as photographs, sketches, etc., should be on 8½x11" sheets attached to this report.
The ACCURACY and COMPLETENESS of this report constitutes your insurance of a better product. Mail to your Zone Office immediately, upon completion of work (within 24 hours).
SEND OTHER SIDE IF NECESSARY.

Figure 10—Sample 541 Product Information Report

[fol. 506]

506

[fol. 507]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DEFENDANT'S EXHIBIT NO. 11

(Letterhead of General Motors Corporation,
Detroit 2, Michigan)

June 30, 1958

State of Washington
Tax Commission
Excise Tax Division
Olympia, Washington

Gentlemen:

This is in response to the request made by Mr. R. H. Munzinger, your Supervising Auditor, for detailed information regarding the activities carried on in the State of Washington by our Buick, Cadillac, GMC Truck & Coach, Oldsmobile, Pontiac, and United Motors Service divisions.

As you are aware, our United Motors Service Division is currently filing sales, use, and business tax returns in the State of Washington, and we appear to have no differences of opinion as to the type or scope of transactions to be reported by the Division for purposes of these taxes. Accordingly, we have limited our reply to the activities of the other named Divisions. Each of them conducts its activities in substantially the same manner and through like organizations. Accordingly, in most instances, we have described the activities of a single Division in answering the various questions. Where exceptions do exist with respect to a given Division, they have been noted. This is also true with respect to the sample documents furnished at Mr. Munzinger's request.

Question: Copy of Franchise Agreement between the division and its dealers or distributors, as currently used. If any material changes have been made in this form sub-

sequent to the start of our current audit period, January 1, 1953, an explanation of such changes, or copy of the Agreement as used prior, would be helpful.

Answer: We furnished Mr. Munzinger, prior to his leaving Detroit, with copies of the forms of Dealer Selling Agreements now in effect between the Divisions and their dealers or distributors. Except for some differences in the termination provisions, these Agreements are substantially the same as those in use throughout this audit period.

[fol. 508] Question: Names, cities of domicile, and territories covered by, all field representatives (e.g., District Managers and Service Representatives) serving Washington dealers during our audit period (1953-1957).

Answer: Attached as EXHIBITS 1, 2, 3, and 4 are statements giving this information for our Buick, GMC Truck & Coach, Oldsmobile, and Pontiac divisions respectively. Similar information with respect to Cadillac, and the coach sales and service representatives of GMC Truck & Coach, was previously furnished to Mr. Munzinger, and we assume that no additional information is now required.

Question: Job description for the above positions if such has been published. If not, a statement outlining what the company considers to be the duties and responsibilities of these positions. Included in such statement should be a description of the representative's functions in connection with the preparation of any reports required from the dealer regarding a forecast of future new car orders. The extent of assistance given in the preparation of actual orders, the nature of his activities in connection with the dealer's display activities, advertising, operation of service facilities, and general operating methods. Also how frequently, on the average, are individual dealers contacted by these field representatives?

Answer: To assist in the understanding of the duties and responsibilities of "field representatives," we believe it may be helpful to explain in some detail the field organization of which they are a part. The following comments relate primarily to Divisions other than Cadillac since that Division operates in a somewhat different manner as is described later.

Each Division distributes its products to a nation-wide dealer organization. To serve this organization, each Division has divided the country, for administrative purposes, into regions, zones, and districts. A region, which has an office under a Regional Manager, generally includes several states. In the case of Pontiac, for example, there are 6 regions covering the 48 states. Each region, in turn, is divided into zones, each of which normally serves several states or parts thereof. Again, in the case of Pontiac, there are 27 zones. Each zone has an office under the direction of a Zone Manager who reports to the Regional Manager previously referred to. Each zone, in turn, is divided into [fol. 509] districts. The size of these districts depends on the number of dealers located in the area and is served by a District Manager who has no office of his own but who reports to the Zone Office. Pontiac at present has 134 such districts.

The objectives the Divisions hope to accomplish by working through this organization may be summarized as follows:

(1) To obtain information which will enable the Divisions to know at all times its dealers' immediate and prospective automobile requirements so that car production and shipment can be scheduled as closely as possible in line with such requirements.

(2) To assist dealers in advertising the Corporation's products. This takes various forms. In some instances, the Divisions develop and make available to dealers promotional programs under which the dealers can obtain, at nominal cost, various forms of advertising material. Dealers are not required to take advantage of this service. In other instances, the Divisions provide advertising material at no cost to the dealers. Finally, the Divisions will assist dealers in programs which they themselves may develop to meet their own particular local situation. All of the above aids to the dealers apply equally to sales of new products as well as used cars.

(3) To assist dealers in programs relating to the servicing of the product. This includes, among other things, furnishing assistance to dealers in problems relating to tool and shop equipment needs, training of mechanics, etc. Again this assistance is limited to the dealers' needs and demands. In this area falls the administration of warranty and policy adjustments. In connection therewith, the Divisions will, at the individual dealer's request, give direct technical assistance on particular owner problems.

(4) To assist dealers in the field of business management by making available comparative operating data, analyzing particular dealer operations, etc.

(5) To locate prospective dealers and to make whatever investigations are necessary to determine whether applicants would qualify as a dealer of the Division's products.

[fol. 510] A zone office generally will have specialists in each of the areas referred to above. The Zone Manager, who assumes overall responsibility for seeing that the objectives of the Division are carried out in his zone, coordinates their activities to this end. Actively assisting him is the Assistant Zone Manager. The individual specialists include the Parts and Accessories Merchandising Manager, who is responsible for the effectiveness of the parts and accessories merchandising in the zone area; the Service, or Parts and Service, Manager, who is responsible for the effectiveness of the service function in the zone area; the Business Management Manager, who assists dealers in developing efficient management of their dealerships; and the Claim Administrator who deals primarily in warranty and policy claims. We have listed only the more important positions in a zone office. There are others, of course, necessary to its every day operations.

The primary dealer contact is through District Managers and the Service Representatives. These employes assist dealers in problems arising in any of the aforementioned areas. Moreover, when it appears desirable, they refer to

the appropriate specialists in the zone office any particular problems that dealers may have. The degree of assistance that a District Manager or Service Representative gives to a dealer depends largely on the dealer's own desires. They would, of course, make recommendations in an effort to correct any outstanding weaknesses in any phase of a dealer's operations.

The number of visits to a given dealer in any one month would depend in part on his size and individual problems. Generally, large dealers are visited several times a month; the smaller ones perhaps once a month or, in some cases, every other month.

It should be emphasized that the District Managers are not "order-takers." They would, if dealers had their orders prepared, act as a messenger to the zone office. In addition, if dealers wished assistance in physically preparing the orders, the District Managers would give such assistance. As is later explained, dealers are free to order whatever stocks they believe are necessary for their individual operations.

Cadillac's operations are somewhat different from the other Divisions in that it sells primarily to distributors. [fol. 511] In Washington, for example, it has selling agreements with two such organizations. These distributors have the function of finding and appointing dealers, to whom they sell at wholesale. They have also their own retail operations. Cadillac's field representatives in the area including Washington consist of a District Sales Manager and a District Parts and Service Manager, both of whom are stationed in Portland, Oregon. Their responsibilities are similar to those of the other Divisions' District Managers and Service Representatives, above described, except that their service is rendered primarily to distributors. Dealers of the distributor are visited only in the company of a representative of the distributor or with the distributor's prior approval.

Question: A list of periodic reports required from dealers, with brief description and frequency required.

Answer: Attached as EXHIBIT 5 is a copy of the Dealer Monthly Projection prepared by dealers of the Pontiac Motor Division. Similar reports are requested of dealers of the other Divisions, and while the form thereof may differ in some respects, the data required are essentially the same. You will note that this is both a projection of estimated sales and an analysis of inventories on hand with respect to the current month and the three succeeding months.

The above-mentioned reports are used by the Divisions as guides in scheduling future production and as a basis for the anticipation of requirements for materials and supplies. District Managers will, upon request, assist dealers in preparing this report. They would, of course, advise dealers as to the availability of various model and body styles, which is particularly important in periods when the demand for cars exceeds available supplies. District Managers are also qualified to advise dealers of nation-wide trends in buying habits as they relate to body styles, colors, etc. Because of this assistance, dealers can more accurately forecast sales volume for future periods.

Attached as EXHIBIT 6 is the Dealer's Ten-Day Report on New Cars submitted by dealers of Pontiac Motor Divi- [fol. 512] sion but typical of those used by dealers of the other Divisions. Dealers send it to the zone office three times a month. It is a detailed analysis by model and body style of inventories on hand at the beginning of the ten-day period, purchases of cars from the factory during that period, and retail deliveries during that period. It provides the Division with up-to-date information as to car sales, and based on inventories on hand, gives an indication of orders that can be expected from dealers within the succeeding ten-day period. These reports are, of course, indicative of market trends and from them the Divisions can make modifications to the dealer projections previously referred to. Accordingly, these reports are, in effect, supplements to the Dealer Monthly Projection and, as such, serve the same general purposes.

Attached as EXHIBIT 7 is the financial statement which Pontiac dealers submit monthly. Similar forms are sub-

mitted by dealers of the other Divisions. They provide statistical data which enable the Divisions to keep in close touch with the financial health of the dealer industry.

In addition to the above, there are certain other forms used by the dealers for reporting information on product performance, defects, salesmen's contests, and other matters, either regular or sporadic. We do not believe such reports are of sufficient importance to warrant description at this time.

Question: A statement re the company's policy in connection with accounting systems to be maintained by dealers.

Answer: General Motors' policy in connection with the accounting systems to be maintained by dealers is covered by Section 13 of the current Selling Agreements, copies of which are in your possession.

Question: A statement re the company's policy in connection with the extent of inventory of cars, parts, special tools maintained by dealers.

Answer: General Motors has not established any policy in connection with dealers' inventory of new cars, it being the dealers' responsibility to maintain the stock required in their judgment to operate their business successfully. See Section 14 of the Dealer Selling Agreement.

[fol. 513] Question: A statement re company's normal procedure in processing complaints from customers re individual dealers.

Answer: Customer complaints regarding individual dealers generally fall into two classes. The first class consist of complaints with respect to the product. The second class consists of complaints regarding the dealer himself due to what the customer might term "mishandling."

The normal procedure followed by all Divisions with respect to the handling of product complaints is as follows:

When the Division, either at its Central Office or Zone Office, is advised by an owner of his dissatisfac-

tion with the product, it so advises the dealer who sold the product, or who has the responsibility for servicing the product in the territory in which the owner lives. At that time, it is suggested that the dealer contact the owner to determine the nature and basis for the dissatisfaction and to take whatever action is appropriate to correct the situation. If, in doing so, the dealer incurs expense, he submits a claim for reimbursement of such expense to the Division. Generally, the dealer would be reimbursed for his full labor cost, plus 110% of his cost of parts, accessories, and other materials used in making the adjustment.

When the Division receives a complaint from a customer expressing dissatisfaction with a dealer, as such, a letter of acknowledgement is sent advising the customer that the matter will be investigated. The Division, generally through its zone office personnel, will advise individual dealers of the customer's complaint. In most instances, the dealer, recognizing the importance of keeping the customer's goodwill, takes the initiative in discussing the matter with the customer in an effort to overcome the customer's particular complaint.

Question: A description of normal procedure in performing a franchise investigation of a prospective dealer applicant, including a statement as to what signatures of approval are required on such applications.

Answer: The following is the typical procedure followed by the various Divisions in investigating a prospective dealer.

[fol. 514] The prospect files an application on a form, of which the attached EXHIBIT 8, the application used by Pontiac, is representative. Investigation is made locally by zone personnel through banks, Chamber of Commerce, other automobile dealers, and business, as to the applicant's character and general business ability, supplemented by reports obtained by the Zone Manager from Dun & Bradstreet and similar agencies.

As previously indicated, the Zone Manager is responsible for carrying out the objectives of the division in his particular zone. Accordingly, he will take whatever steps he believes are necessary to satisfy himself as to the prospect's qualifications, which may include a personal interview. He then furnishes his Regional Manager with all the facts regarding the proposed dealership and the prospect's qualifications. If the potential of the area to be served by the dealership is sufficiently large, the Regional Manager may also deem it desirable to interview the prospect before making any recommendations to the Central Office of his division. If the area to be served by the dealer is an important one, for example, within a large metropolitan area, an Assistant General Sales Manager, or even the General Sales Manager, may elect to interview the prospect before reaching a final decision for the Division with respect to the qualifications of the applicant, and the acceptability of the applicant's proposal.

Cadillac Division, since it operates through distributors, would follow a somewhat similar procedure in replacing a distributor or opening a new distributorship. However, the responsibility for processing dealers under the distributorship is delegated to the distributor.

Question: Addresses, and periods during which operated, of any branch zone, or other sales office maintained in the State of Washington during the audit period.

Answer: During the period January 1, 1953, through January 15, 1956, GMC Truck & Coach Division maintained a sales office at 702 Fifth Avenue, S. Seattle, Washington. In addition, a retail store was operated at 600 Fifth Avenue, S. Seattle from January 1, 1953, to April 30, 1955, and from December 1, 1955, to the present time. No offices are maintained in the State by the Buick, Cadillac, Oldsmobile, or Pontiac divisions.

[fol. 515] Question: Addresses at which automobiles have been warehoused in the State prior to delivery to dealers or distributors; if a public warehouse, the name under which operated.

Answer: During the period under audit, Buick and Pontiac warehoused a small portion of their products in public warehouses at the following addresses:

Transport Storage and Distributing Co.
74 Jackson Street
Seattle 4, Washington

Auto Storage and Distributing Co.
109 Browne Street
Spokane, Washington

Oldsmobile warehoused to a minor extent in public warehouses at the following addresses:

Transport Storage and Distributing Co.
74 Jackson Street
Seattle, Washington

Barton Auto Co.
1107 W. Railroad Avenue
Spokane, Washington

In the case of GMC Truck & Coach Division, a few trucks were warehoused at their location at 600 Fifth Avenue, Seattle, and until October 31, 1954, at the Transport Storage and Distributing Co., 74 Jackson Street in Seattle.

Question: Listing of any bank accounts maintained in the State of Washington.

Answer: The following bank accounts are currently maintained in the name of General Motors Corporation in Seattle, Washington: The Bank of California, The National Bank of Commerce of Seattle, The Pacific National Bank of Seattle, Peoples National Bank of Washington and the Seattle First National Bank. In Spokane, an account is maintained in the Seattle—First National Bank; and in Tocoma, in The Bank of California.

Divisions are authorized to make deposits in these accounts. However, withdrawals can only be made by the [fol. 516] Treasurer of General Motors Corporation, or his authorized representatives, none of whom is a Divisional employe.

Question: A description of normal financing procedure on new cars sold to dealers.

Answer: The normal financing procedures followed by the divisions in effecting the sale of their cars and trucks to dealers is set forth in Section 3 of each of the Divisions' Selling Agreements, copies of which are in your possession.

Question: A statement concerning the manner in which the company, or any of its affiliated corporations participate in financial assistance to its franchised dealers, and the extent thereof.

Answer: The manner in which General Motors or its affiliated corporations assist in financial assistance to dealers falls into two broad categories, namely, to make available funds for capital purposes and to provide funds for financing floor plan products and operating capital requirements.

The first of these activities, the providing of capital funds, is carried on by the Motors Holding Division of General Motors Corporation. The basic facts and principles underlying the investments of funds by this division are set forth in the attached pamphlet (EXHIBIT 9) entitled Dealer Investment Plan. These investments are made primarily to help a new dealer get started, or to assist in a reorganization, and are intended to be temporary.

The second category of financial assistance to dealers is offered through General Motors Acceptance Corporation and Yellow Manufacturing Acceptance Corporation, subsidiary companies of General Motors Corporation. Both of these companies operate on a basis similar to any financing institution which engages in the business of financing floor plan products and the advancing of operating capital to business organizations. The selection of the financing institution for the handling of either the wholesale financing or the advancing of operating capital is, of course, left entirely to the discretion of the individual dealer who uses whatever financial source he finds most convenient for his purpose. Some dealers use entirely their own capital while others prefer to borrow from banks or other financial institutions.

[fol. 517] We regret that we were unable to furnish you with the above information at an earlier date. However, we hope that, as a result of the time spent in preparing our reply, you will find that it fully serves your purpose.

Very truly yours,

/s/ ROBERT F. MAGILL

Robert F. Magill
Director, Tax Section

cs
Attachs.

[fol. 518]

EXHIBIT NO. 3 TO DEFENDANT'S EXHIBIT NO. 11

(See opposite) ☞

Exhibit No. 3 to Defendant's Exhibit No. 11

GENERAL MOTORS CORPORATION
OLDSMOBILE DIVISION
FIELD REPRESENTATIVES IN STATE OF WASHINGTON DURING PERIOD 1923--1957

Representative	Period of Residence	Residence Address
C. J. Church	January 1923 to August 31, 1923 April 19, 1939 to August 1, 1952	5102 Wallingford Ave., Seattle 4902 S.E. 91st Avenue, Seattle
R. T. Prodinger	January 1923 to January 15, 1954 Territory - State of Washington January 15, 1954 to September 1, 1954	3830 W.E. 10th Ave., Portland 516 W. Smith, Seattle
W. R. Stone	May 1953 to November 1, 1954	5102 Wallingford Ave., Seattle
M. E. Kelly	September 1953 to April 1, 1955 April 1, 1955 to September 30, 1955	4915 E. Commercial, Spokane W. 4410 Hoffman Place, Spokane
E. J. Junkin	March 1955 to September 1, 1955 September 1, 1955 to August 2, 1956 August 2, 1956 to present	3128 W. Eloika Avenue, Spokane N. 6124 Monroe Street, Spokane N. 7421 Fox Point Drive, Spokane
G. R. Nickelson	August 1955 to present	10251 N.E. 30th Place Bellevue
R. E. Ahrendt	February 1956 to May 4, 1956 May 4, 1956 to present	E. 3828 Montgomery, Spokane N. 9312 Maple Street, Spokane
F. R. Peterson	July 1957 to present	1108 S. 65th, Tacoma

[fol. 518]

405

[fol. 519]

EXHIBIT No. 4 TO DEFENDANT'S EXHIBIT No. 11

519

GENERAL MOTORS CORPORATION
PONTIAC MOTOR DIVISION
FIELD REPRESENTATIVES IN STATE OF WASHINGTON DURING PERIOD 1953--1957

Seattle		Spokane		Walla Walla		Yakima	
A. E. Hagen	1/1/53	A. M. Rogers	1/53	W. I. Ozbirn	1/53	W. G. Dempsey	1/55
A. M. Rogers	9/53	P. R. Judy	9/53	L. L. Stubberfield	6/53	R. S. Bartle	2/55
L. L. Stubberfield	2/55	R. P. MacDuff	11/54	*W. G. Dempsey	9/53	A. J. Kelly	3/55
R. E. Signer	3/57	R. E. Signer	10/55			W. T. Callahan	4/56
		D. G. Walker	5/57				

Territory
Anacortes
Arlington
Auburn
Belleview
Bellingham
Bremerton
Coupeville
Enumclaw
Everett
Dyn Dun
Mt. Vernon
Olympia
Port Angeles
Port Townsend
Puyallup
Renton
Seattle
Sedro Woolley
Shelton
Snohomish
Tacoma
Winslow

Territory
Chewelah
Colfax
Colville
Davenport
New Port
Pullman
Ritzville
Spokane
Tekoa
Wilbur

Territory
Cheiam
Cle Elum
Dayton
Ellenburg
Ephrata
Golden Dale
Grandview
Moses Lake
Omak
Oroville
Pasco
Toppemish
Walla Walla
Wapato
Wenatchee
Yakima

* Mr. Dempsey was in Pendleton, Oregon, in September 1953

508-SR
60M—8-57

DEALER MONTHLY PROJECTION

(ADDRESSOGRAPH—DEALER POINT)

ESTIMATED SALES OBJECTIVE AND CAR REQUIREMENTS

(To be used for planning purposes only)

NOTE: Please prepare in triplicate.
Mail two copies to Zone Office before 10th of each month.
Third copy to be retained in dealer file.

Present Month	Actual Stock On 1st	
	Estimated Total Will Receive	
	Total Available	
	Estimated Sales	
1st Month	Estimated Stock On 1st	
	Estimated Requirements	
	Total Available	
	Estimated Sales	
2nd Month	Estimated Stock On 1st	
	Estimated Requirements	
	Total Available	
	Estimated Sales	
3rd Month	Estimated Stock On 1st	
	Estimated Requirements	
	Total Available	
	Estimated Sales	
	Estimated Stock On 1st	

ESTIMATED REQUIREMENTS BY BODY TYPE AND MODEL

Model & Body Style		Month 1st	2nd	3rd
CHIEFTAIN MODELS	2 Door Sedan			
	4 Door Sedan			
	Catalina Coupe			
	Catalina Sedan			
	4-Dr. 2-Seat Safari			
	4-Dr. 3-Seat Safari			
	Conv. Coupe			
	Total			
SUPER CHIEF MODELS	4-Door Sedan			
	Catalina Coupe			
	Catalina Sedan			
	Total			
STAR CHIEF MODELS	Cust. 4-Dr. Sedan			
	Cust. Catl. Coupe			
	Cust. Catl. Sedan			
	Cust. 4-Dr. 2 Seat Saf.			
	Total			
BONNEVILLE MODELS	Cust. Sport Coupe			
	Cust. Conv. Coupe			
	Total			

ENTER HERE → Grand Total

ENTER HERE → Grand Total

ENTER HERE → Grand Total

Firm Name _____

Dealer's Signature _____

520

[fol. 521]

FORM 414
PONTIAC MOTOR DIVISION
GENERAL MOTORS CORPORATION

521

PLEASE TYPE OR PRINT ALL INFORMATION

MAIL TO ZONE OFFICE ON THE 10TH, 20TH, AND LAST DAY OF EACH MONTH (MAIL ORIGINAL TO ZONE OFFICE / RETAIN CARBON COPY FOR YOUR FILE)

3RD FOLD ← ★INSERT COMPLETE INFORMATION AS REQUESTED ON THESE LINES → 3RD FOLD

DEALERS TEN DAY REPORT ON NEW CARS

PERIOD ENDING _____

★ DEALER _____ (DEALERSHIP NAME) TOWN _____ STATE _____

1958 MODELS	CHIEFTAIN 2 DR SED 32	CHIEFTAIN 4 DR SED 34	CHIEFTAIN CAT CPE 31	CHIEFTAIN CAT SED 30	CHIEFTAIN 2 ST SAF 35	CHIEFTAIN 3 ST SAF 36	CHIEFTAIN CONV CPE 33	CHIEFTAIN TOT CH	SUPER CHIEF 4 DR SED 44	SUPER CHIEF CAT CPE 41	SUPER CHIEF CAT SED 40	SUPER CHIEF TOT SUP CH	STAR CHIEF CUST 4 DR SED 64	STAR CHIEF CUST CAT CPE 61	STAR CHIEF CUST CAT SED 60	STAR CHIEF CUST SAF 65	STAR CHIEF SAF 55	STAR CHIEF TOT ST. CH	BONNEVILLE CUST SPORT CPE 78	BONNEVILLE CUST CONV CPE 73	BONNEVILLE TOT BONN	GRAND TOTAL ALL MODELS
(1) ACTUAL NEW CAR STOCK ON HAND END LAST PERIOD (DOES NOT INCLUDE DEALER-OWNED DEMOS., CO. CARS, OR CARS IN TRANSIT TO DEALER) (FROM LINE 9 LAST REPORT)																						
(2) NEW CARS RECEIVED FROM FACTORY AND ZONE WAREHOUSE SINCE LAST REPORT (DO NOT INCLUDE CARS IN TRANSIT)																						
(3) NEW CARS RECEIVED FROM OTHER PONTIAC DEALERS DURING THIS PERIOD — NO. OF CARS																						
(3) — CAR SERIAL NO																						
(3) — NAME OF DEALER																						
(3) — LOCATION																						
(4) NEW CARS TRANSFERRED TO DEALER OWNED DEMOS. OR CO. CAR USE DURING THIS PERIOD																						
(5) TOTAL NEW CARS AVAILABLE FOR SALE (TOTAL OF LINES 1, 2, AND 3 MINUS LINE 4)																						
(6) RETAIL DELIVERIES OF NEW CARS THIS PERIOD (DO NOT INCLUDE CARS SOLD TO OTHER DEALERS)																						
(7) NEW CARS SOLD TO OTHER PONTIAC DEALERS DURING THIS PERIOD — NO. OF CARS																						
(7) — CAR SERIAL NO																						
(7) — NAME OF DEALER																						
(7) — LOCATION																						
(8) DEALER OWNED DEMOS. AND CO. CARS SOLD AT RETAIL THIS PERIOD																						
(9) ACTUAL NEW CAR STOCK ON HAND END THIS PERIOD (DO NOT INCLUDE DEALER OWNED DEMOS., CO. CARS, OR IN TRANSITS) (LINE 5 MINUS LINES 6 AND 7)																						
(10) DEALER OWNED DEMOS. AND CO. CARS ON HAND END THIS PERIOD (LINE 10 LAST REPORT PLUS LINE 4 MINUS LINE 8)																						
(10a) DEALER OWNED DEMOS. ON HAND END THIS PERIOD (LINE 10 MINUS DEALER CO. CARS)																						
(10b) NEW CAR DEMONSTRATORS PRIVATELY OWNED BY RETAIL SALESMEN																						
(11) UNFILLED SIGNED RETAIL ORDERS THIS REPORT																						

IMPORTANT—LINES 9 & 10 IN NEW CAR S ON AND LINE 11 IN USED CAR SECTION JST AGREE WITH YOUR ACTUAL PHYSICAL INVENTORIES

DEALERS TEN DAY REPORT ON USED CARS

PERIOD ENDING _____

★ DEALER _____ TOWN _____ STATE _____

[fol. 522]

USE GUMMED STICKERS AT BACK OF PAD FOR SEALING

FROM _____

_____

_____

PLACE 3 CENT STAMP HERE

PONTIAC MOTOR DIVISION

GENERAL MOTORS CORPORATION

_____
(ZONE OFFICE ADDRESS)

_____ _____
(ZONE OFFICE CITY) (STATE)

FIRST CLASS

(1) TOTAL USED CARS ON HAND (LINE 11) LAST REPORT		(7) USED CARS SOLD AT RE IL, SINCE LAST REPORT	
(2) USED CARS TAKEN IN ON NEW CARS, SINCE LAST REPOR		(8) USED CARS SOLD AT WH SALE, SINCE LAST REPORT	
(3) USED CARS TAKEN IN ON USED CARS, SINCE LAST REPORT		(9) USED CARS SCRAPPED, SINCE LAST REPORT	
(4) USED CARS PURCHASED, SINCE LAST REPORT		(10) TOT USED CARS SOLD AND SCRAPPED (ADD LINES 7, 8 & 9)	
(5) USED CARS REPOSSESSED, SINCE LAST REPORT		(11) ACT USED CAR STOCK, END THIS PERIOD (LINE 6 - LINE 10)	
(6) TOT AVAIL STOCK THIS REPORT (ADD LINES 1, 2, 3, 4 & 5)		(12) USED CARS IN INVENTORY OVER 30 DAYS	

_____
(DEALERSHIP NAME)

522

[fol. 523]

PLEASE TYPE OR PRINT NAME AND ADDRESS OF PURCHASERS OF NEW PONTIACS INCLUDING DEALER OWNED DEMOS. AND CO. CARS DELIVERED AT RETAIL THIS TEN DAY PERIOD

FOLD FIRST ON PERFORATION

SHOW COMPLETE INFORMATION.

DO NOT SHOW DELIVERIES TO OTHER PONTIAC DEALERS

★ ZONE _____ DEALER _____ (DEALERSHIP NAME) TOWN _____ STATE _____ PERIOD ENDING _____

(MRS. MISS. OR MR.)	CUSTOMER'S FULL NAME (SHOW INITIALS OR GIVEN NAME)	OCCUPATION	STREET ADDRESS	CITY OR TOWN	STATE	CAR BOUGHT					TRADE IN	
						CH	SUP. CH.	STAR CH	BONN	MOTOR SERIAL NUMBER	YR.	MAKE
REFER TO EXAMPLES SHOWN BELOW AS A GUIDE												
Mr.	A. B. Smith	Merchant	410 Main St.	Jonesboro	Mich.			x		P-858H-14156	54	Buick
Miss	Billie Brown	Teacher	none	Hometown	Mich.	x				P-558S-15015	53	Chev.
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												

TOTAL NAMES SHOULD EQUAL RETAIL DELIVERIES SHOWN ON LINES 6 AND 8 ABOVE

(CONTINUE ON REVERSE SIDE)

FINANCIAL STATEMENT

COVERING PERIOD FROM _____ TO _____ DEALER _____

_____ RETAIL _____ WHOLESALE _____ TOTAL _____

_____ RETAIL _____ WHOLESALE _____ TOTAL _____ ADDRESS _____

LINE NO	ASSETS	ACCT NO.	AMOUNT	LINE NO	LIABILITIES	ACCT NO	AMOUNT	LINE NO
1	CURRENT ASSETS			1	CURRENT LIABILITIES			1
2	CASH			2	ACCOUNTS PAYABLE			2
3	Petty	200		3	Trade Creditors	300		3
4	On Hand	201		4	Accounts Receivable Credit Balances	220		4
5	In Bank	202		5	Customer Deposits	220		5
6				6	Service Contract Deposits	307		6
7	CONTRACTS IN TRANSIT	205		7				7
8	TOTAL CASH AND CONTRACTS (LINES 3 TO 7 INC.)			8				8
9	RECEIVABLES			9	NOTES PAYABLE			9
10	Customer Notes—Not Due	210		10	New Cars Financed	310		10
11	Customer Notes—Past Due	210		11	Banks	312		11
12	Customer Accounts—Not Due	220		12	Others	314		12
13	Customer Accounts—Past Due	220		13				13
14	Accounts Payable Debit Balances	300		14				14
15				15	ACCRUED LIABILITIES			15
16				16	Interest	320		16
17				17	Payroll	321		17
18	Memo (Car Accounts in Acct. 220 $)		XXXXXXXX	18	Commissions and Salaries—Salesmen	322		18
19	TOTAL RECEIVABLES (LINES 10 TO 17 INC.)			19	Insurance	323		19
20	INVENTORIES			20	Taxes—Other than Income	324		20
21	★ Company Cars ( )	230		21	Income Taxes—Previous Year (Corp. Only)	325		21
22	★ New Cars (Pass.) (Com.) (Tot.)	231		22	Income Taxes—Current Year (Corp. Only)	326		22
23				23	Bonuses	327		23
24				24				24
25	New Car Freight and Handling	238		25				25
26	Special Bodies and Truck Equipment	239		26				26
27	★ Used Cars (Pass.) (Com.) (Tot.)	240		27				27
28	★ Repossessed Cars (P.) (C.) (T.)	241		28				28
29	Parts	242		29	TOTAL CURRENT LIABILITIES (LINES 3 TO 28 INC.)			29
30	Accessories	243		30	RESERVES — CURRENT ASSETS			30
31	Gas, Oil and Grease	244		31	Bad Debts	340		31
32	Paint and Body Shop Materials	245		32				32
33	Sublet Repairs	246		33				33
34	Work in Process—Labor	247		34				34
35	Miscellaneous Assets Received in Trade	248		35				35
36				36	TOTAL CURRENT ASSET RESERVES (LINES 31 TO 33 INC.)			36
37				37	TOTAL (LINES 29 AND 35)			37
38				38	MORTGAGES PAYABLE (Land & Bldgs.)	335		38
39				39				39
40	TOTAL INVENTORIES (LINES 21 TO 35 INC.)			40	RESERVES — FIXED ASSETS			40
41	SECURITIES	260		41	Depreciation of Buildings and Improvements	351		41
42	DISCOUNTS RECEIVABLE	261		42	Depreciation of Mach. and Shop Equipment	352		42
43	DUE FROM FINANCE COMPANIES	262		43	Depreciation of Parts and Access. Equipment	353		43
44	FACTORY CLAIMS	263		44	Depreciation of Furniture and Fixtures	354		44
45	INSURANCE COMMISSIONS REC.	264		45	Depreciation of Service Cars	355		45
46	PREPAID EXPENSES			46	Amortization of Leaseholds	356		46
47	Taxes	270		47				47
48	Insurance	271		48				48
49	Rent — NET WORKING CAPITAL	272		49	TOTAL FIXED ASSET RESERVES (LINES 41 TO 48 INC.)			49
50	Interest	273		50	TOTAL LIABILITIES AND RESERVES (LINES 37, 38, 39 & 49)			50
51	Advertising — $	274		51	NET WORTH			51
52				52	CORPORATIONS ONLY — CAPITAL STOCK	360		52
53				53	SURPLUS	370		53
54	TOTAL PREPAID EXPENSES (LINES 47 TO 53 INC.)			54				54
55	TOTAL CURRENT ASSETS (LINES 8, 19, 40, 41, 42, 43, 44, 45 & 54 INC.)			55	DIVIDENDS	375		55
56	FIXED ASSETS			56	PARTNERSHIPS EXHIBITS — INVESTMENT ACCOUNT (LIST EACH PARTNER)	380		56
57	Land—Auto Business Only	280		57				57
58	Buildings and Imp —Auto Business Only	281		58				58
59	Machinery and Shop Equipment	282		59				59

THE REYNOLDS & REYNOLDS CO., DELPHA, OHIO
LITHO IN U.S.A.

[fol. 525]

EXHIBIT No.

| | | |

PAGE 2

TOTAL INCOME AND EXPENSE

LINE No	NAME OF ACCOUNT	ACCT NO	TOTAL INCOME AND EXPENSE — MONTH	TOTAL INCOME AND EXPENSE — YEAR TO DATE	A—NEW CAR DEPARTMENT — MONTH	A—NEW CAR DEPARTMENT — YEAR TO DATE	LINE No
1	NET SALES						1
2	COST OF SALES						2
3	GROSS PROFIT						3
4	VARIABLE SELLING EXPENSES						4
5	Salaries—Car Salesmen	10					5
6	Commissions—Car Salesmen	11					6
7	Other Compensation—Car Salesmen	12					7
8	Delivery Expense	13					8
9	Installing Bodies, Accessories and Equipment	14					9
10	Policy Adjustments—New and Used Cars	15					10
11	Advertising Fund	16					11
12	New Car Inspection Expense	17					12
13							13
14							14
15	TOTAL VARIABLE SELLING EXPENSE						15
16	FIXED EXPENSE GROUPS						16
17	Salaries—Owners	20					17
18	Salaries—Supervision	21					18
19	Salaries—Clerical	22					19
20	Other Salaries and Wages	23					20
21	Absentee Wages—Productive Personnel	24					21
22							22
23							23
24	TOTAL SALARY AND WAGE GROUP						24
25							25
26	Unsalable Stock Scrapped	30					26
27	Warehousing	31					27
28	Used Car Maintenance Expense	33					28
29	Demonstration Expense	50					29
30	Company Car Expense	51					30
31	Stationery and Office Supplies	60					31
32	Other Supplies	61					32
33	Advertising—Local	65					33
34	Contributions	66					34
35	Policy Adjustments—Parts and Service	67					35
36	Travel and Entertainment	70					36
37	Memberships, Dues and Publications	71					37
38	Legal and Auditing Expense	72					38
39	Freight, Express and Cartage	73					39
40	Telephone and Telegraph	74					40
41	Postage	75					41
42	Miscellaneous Expense	76					42
43							43
44							44
45							45
46							46
47	TOTAL SEMI-FIXED EXPENSE GROUP						47
48							48
49	Rent	80					49
50	Amortization—Leaseholds	81					50
51	Maintenance—Real Estate	82					51
52	Depreciation—Buildings and Improvements	83					52
53	Taxes—Real Estate	84					53
54	Insurance—Buildings and Improvements	85					54
55	Heat, Light, Power and Water	87					55
56	Insurance—Other than Buildings and Improvements	88					56
57	Taxes—Other than Real Estate and Income	89					57
58	Maintenance—Equipment	90					58
59	Depreciation—Other than Buildings and Improvements	91					59
60	Employe Benefits	92					60

| | | |

DEF RTMENTAL INCOME AND EXPENSE

LINE NO.	B—USED CAR DEPARTMENT		C—SERVICE DEPARTMENT		D—PARTS & ACC. DEPT.		Z—ADMINISTRATIVE		LINE NO.
	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	MONTH	YEAR TO DATE	
1									1
2									2
3									3
4									4
5									5
6									6
7									7
8									8
9									9
10									10
11									11
12									12
13									13
14									14
15									15
16									16
17									17
18									18
19									19
20									20
21									21
22									22
23									23
24									24
25									25
26									26
27									27
28									28
29									29
30									30
31									31
32									32
33									33
34									34
35									35
36									36
37									37
38									38
39									39
40									40
41									41
42									42
43									43
44									44
45									45
46									46
47									47
48									48
49									49
50									50
51									51
52									52
53									53
54									54
55									55
56									56
57									57
58									58
59									59
60									60

[fol. 527]

Distribute year-to-date administrative expense to operating departments in same proportions as direct expense. Month administrative expense distribution should be difference between current and previous month year-to-date distribution.

ADDITIONS TO INCOME						DEDUCTIONS FROM INCOME					
ACCOUNT	ACCT. NO	CURRENT MONTH			YEAR TO DATE	ACCOUNT	ACCT. NO	CURRENT MONTH			YEAR TO DATE
Cash Discount Earned	800					Cash Discount Allowed	850				
Interest Earned	801					Interest	851				
Bad Debts Recovered	803					Provision for Bad Debts	852				
Sale of Scrap	804					Repossession Losses	853				
Other Income	805										
Insurance Commissions Earned	806					Other Deductions	855				
Finance Income	807					Insurance Commissions Paid	856				
TOTAL						TOTAL					

This Financial Statement Form is available in 4 styles, as follows:

With down lines in money columns (for Elite typewriter or longhand)
Buff Paper, DSA-630 Green Paper, DSA-630-G

Without down lines in money columns (for Pica typewriter or longhand)
Buff Paper, DSA-630-S Green Paper, DSA-630-SG

[fol. 527]

414

527

[fol. 524]

524

	Bkd. Unbl. or Rej.	CUSTOMER'S FULL NAME (SHOW INITIALS OR GIVEN NAME)	OCCUPATION	STREET ADDRESS	CITY OR TOWN	STATE	CAR BOUGHT					TRADE IN	
							CH.	SUP. CH.	STAR CH	BONN	MOTOR SERIAL NUMBER	YR.	MAKE
20													
21													
22													
23													
24													
25													
26													

2ND FOLD

2ND FOLD

27													
28													
29													
30													
31													
32													
33													
34													
35													
36													
37													
38													
39													
40													
41													

DEPARTMENTAL GROSS PROFIT ANALYSIS

Line No.	ACCOUNT	No.		CURRENT MONTH No. Sold	CURRENT MONTH Sales	CURRENT MONTH Cost of Sales	CURRENT MONTH Gross Profit	YEAR TO DATE No. Sold	YEAR TO DATE Sales	YEAR TO DATE Cost of Sales	YEAR TO DATE Gross Profit	Line No.
	NEW CAR DEPARTMENT											
1	PASSENGER CARS–RETAIL:											1
2		400										2
3		401										3
4		402	602									4
5		403	603									5
6		404	604									6
7		405	605									7
8	Freight and Handling	406	606									8
9	Accessories	407	607									9
10	Discounts - Trades	408	—									10
11	Discounts - No Trades	409	—									11
12	TOTAL PASSENGER CARS–RETAIL											12
13	COMMERCIAL CARS–RETAIL:											13
14		411	611									14
15												15
16	Special Bodies and Truck Equipment	414	614									16
17	Freight and Handling	415	615									17
18	Accessories	416	616									18
19	Discounts - Trades	418	—									19
20	Discounts - No Trades	419	—									20
21	TOTAL COMMERCIAL CARS–RETAIL											21
22	TOTAL RETAIL											22
23	Pass. Cars - Whlse.	421	621									23
24	Comm. Cars - Whlse.	422	622									24
25	Freight and Handling	423	623									25
26	Accessories	424	624									26
27	TOTAL WHOLESALE											27
28	TOTAL NEW CAR DEPARTMENT											28
29	**USED CAR DEPARTMENT**											29
30	Used Pass. Cars - Retail	430	630									30
31	Recond. - Pass. Retail	—	631									31
32	Discounts - Pass. Retail	432	—									32
33	Used Pass. Cars-Whlse.	433	633									33
34	Adj. Used Car Inv. Pass.	—	634									34
35												35
36	Used Comm. Cars-Retail	435	635									36
37	Recond. - Comm. Retail	—	636									37
38	Discounts-Comm. Retail	437	—									38
39	Used Comm. Cars-Whlse.	438	638									39
40	Adj. Used Car Inv. Comm.	—	639									40
41												41
42	Repossessed Cars	440	640									42
43	TOTAL USED CAR DEPARTMENT											43
44	TOTAL NEW AND USED CAR DEPTS. (VARIABLE) (LINES 28 AND 43)											44
45	**SERVICE DEPARTMENT**											45
46	No. Customer R.O. Written			(PASS	(COMM	(TOTAL		(PASS.	(COMM.'	(TOT		46
47	Labor Cust. - Pass. Cars	450	650									47
48	Labor Cust. - Comm. Cars	451	651									48
49	Labor - Factory Claims	452	652									49
50	Labor - Internal	453	653									50
51	Sublet Repairs	454	654									51
52	Adj. Cost of Labor Sales	—	655									52
53												53
54												54
55												55
56	Miscellaneous	459	659									56
57	TOTAL SERVICE DEPARTMENT											57
58	**PARTS AND ACCESSORIES DEPARTMENT**											58
59	Parts Counter - Retail	460	660									59
60	Parts Rep. Ords. Pass.	461	661									60
61	Parts-Rep. Ords.-Comm.	462	662									61
62	Parts - Factory Claims	463	663									62

[fol. 528]

25	Freight and Handling	423	623	25
26	Accessories	424	624	26
27	TOTAL WHOLESALE			27
28	TOTAL NEW CAR DEPARTMENT			28
29	**USED CAR DEPARTMENT**			29
30	Used Pass. Cars - Retail	430	630	30
31	Recond - Pass. Retail	—	631	31
32	Discounts - Pass. Retail	432	—	32
33	Used Pass. Cars-Whlse.	433	633	33
34	Adj. Used Car Inv. Pass.	—	634	34
35				35
36	Used Comm. Cars-Retail	435	635	36
37	Recond - Comm. Retail	—	636	37
38	Discounts-Comm. Retail	437	—	38
39	Used Comm. Cars-Whlse.	438	638	39
40	Adj. Used Car Inv. Comm.	—	639	40
41				41
42	Repossessed Cars	440	640	42
43	TOTAL USED CAR DEPARTMENT			43
44	TOTAL NEW AND USED CAR DEPTS. (VARIABLE) (LINES 28 AND 43)			44
45	**SERVICE DEPARTMENT**			45
46	No. CUSTOMER R. O. WRITTEN	(PASS	(COMM	(TOTAL	(PASS	(COMM.	(TOTAL	46
47	Labor Cust. - Pass. Cars	450	650					47
48	Labor Cust. - Comm. Cars	451	651					48
49	Labor - Factory Claims	452	652					49
50	Labor - Internal	453	653					50
51	Sublet Repairs	454	654					51
52	Adj. Cost of Labor Sales	—	655					52
53								53
54								54
55								55
56	Miscellaneous	459	659					56
57	TOTAL SERVICE DEPARTMENT							57
58	**PARTS AND ACCESSORIES DEPARTMENT**							58
59	Parts - Counter - Retail	460	660					59
60	Parts - Rep Ords. - Pass.	461	661					60
61	Parts - Rep Ords. - Comm.	462	662					61
62	Parts - Factory Claims	463	663					62
63	Parts - Wholesale	464	664					63
64	Parts - Internal	465	665					64
65	Whlse. Parts Comp.	—	666					65
66								66
67	Inventory Adjustment	—	669					67
68	TOTAL PARTS							68
69	Accessories - Counter	470	670					69
70	Access. - Factory Claims	471	671					70
71	Accessories - Internal	472	672					71
72								
73	Inventory Adjustment	—	679					73
74	TOTAL ACCESSORIES							74
75	Gas, Oil and Grease	480	680					75
76	Miscellaneous	481	681					76
77								77
78								78
79								79
80	TOTAL G O G & MISC (LINE 75 THRU 79)							80
81	TOTAL P & A DEPT (LINES 68 74 & 80)							81
82	TOTAL SERVICE AND P & A DEPTS (FIXED) (LINES 57 & 81)							82
83	TOTAL ALL DEPARTMENTS (LINES 44 & 82)							83

BE SURE TO SHOW NUMBER OF NEW AND USED CARS SOLD AND NUMBER OF CUSTOMER REPAIR ORDERS WRITTEN.

[fol. 528]

415

528

[fol. 529]

FORM 442 (REV.)
U S A SM 9-57

APPLICATION FOR A PONTIAC DEALER SELLING AGREEMENT

PONTIAC MOTOR DIVISION

ZONE OFFICE STREET ADDRESS

DATE _____

CITY AND STATE

GENTLEMEN

I WISH TO FILE AN APPLICATION FOR A ☐ PONTIAC DEALER SELLING AGREEMENT
☐ FINANCIAL INTEREST IN A PONTIAC DEALERSHIP

AND SUBMIT THE FOLLOWING INFORMATION IN CONNECTION THEREWITH

NAME IN FULL _____

STREET ADDRESS _____ HOME PHONE NO. _____

CITY _____ BUSINESS PHONE NO. _____

SIZE DEALERSHIP DESIRED _____ (ANNUAL UNITS); IF THIS APPLICATION IS SUBMITTED FOR A SPECIFIC DEALERSHIP

STATE LOCATION _____; OTHERWISE STATE LOCATION DESIRED IN ORDER OF PREFERENCE

1 _____ 2 _____ 3 _____

ALL PREVIOUS BUSINESS EXPERIENCE

FIRM NAME	CITY	WHOLESALE OR RETAIL	PRODUCT	POSITION	PERIOD FROM	PERIOD TO

DO YOU NOW OWN, OPERATE, OR HAVE A FINANCIAL INTEREST IN, OR HAVE YOU EVER PREVIOUSLY OWNED OPERATED OR HAD A FINANCIAL INTEREST IN, ANY AUTOMOBILE DEALERSHIP? _____ IF YES PLEASE COMPLETE DETAILS BELOW

MAKE OF CAR HANDLED	OWNED, OPERATED OR FINANCIAL INTEREST	PERIOD	CITY	REASON FOR DISCONTINUANCE

STATE PREVIOUS AUTOMOBILE EXPERIENCE IN MANAGEMENT, NEW AND USED CAR MERCHANDISING SERVICE ACCOUNTING, ETC., THAT YOU FEEL QUALIFIES YOU TO OPERATE A DEALERSHIP _____

529

Exhibit No. 8 to Defendant's Exhibit No. 11

416

APPLICANT'S STATEMENT CONTINUED

WILL YOU BE ACTIVE IN THE BUSINESS? _____ TO WHAT EXTENT? _____

IF YOU WILL NOT BE THE ACTIVE MANAGER, STATE WHO WILL _____

YOUR AGE _____ MARRIED OR SINGLE _____ NUMBER OF DEPENDENTS _____

WHAT DO YOU ESTIMATE IT COSTS YOU AND YOUR DEPENDENTS A YEAR TO LIVE? _____

DO YOU RECEIVE OUTSIDE INCOME? _____ IF YES, STATE ANNUAL AMOUNT AND SOURCE _____

HAVE YOU EVER FAILED IN BUSINESS OR COMPROMISED WITH CREDITORS? _____

IF YES, WHEN, WHERE AND CIRCUMSTANCES _____

HAVE YOU ANY OUTSTANDING LIABILITIES AS A RESULT OF PREVIOUS FAILURES? _____

IF YES, GIVE PARTICULARS _____

PRESENT CONDITION OF HEALTH _____ DATE OF LAST EXAMINATION _____

DO YOU CARRY LIFE INSURANCE? _____ AMOUNT _____

BANK REFERENCES _____

PERSONAL REFERENCES OTHER THAN EMPLOYERS, EMPLOYEES, OR RELATIVES

NAME IN FULL	ADDRESS	OCCUPATION	YEARS KNOWN

HAVE YOU EVER BEEN BONDED? _____ NAME OF BONDING CO _____

HAS YOUR BOND APPLICATION EVER BEEN REJECTED? _____ IF YES, GIVE DETAILS _____

HAVE YOU EVER BEEN CONVICTED OF A CRIME? _____ IF SO, STATE WHETHER A MISDEMEANOR OR FELONY AND GIVE DATE OF CONVICTION AND FULL PARTICULARS _____

ARE ANY MEMBERS OF YOUR IMMEDIATE FAMILY IN THE EMPLOY OF GENERAL MOTORS CORPORATION? _____

530

[fol. 530]

417

APPLICANT'S STATEMENT – CONTINUED

IF SO, STATE FULL NAME OF EACH AND POSITION PRESENTLY HELD AND NAME OF DIVISION_____

_____

_____

THE FOLLOWING IS A TRUE AND ACCURATE STATEMENT OF MY FINANCIAL CONDITION:

ASSETS		LIABILITIES	
CASH	$_____	CURRENT ACCOUNTS PAYABLE	$_____
SECURITIES (DESCRIBE)	_____	NOTES PAYABLE	_____
_____	_____	INSTALLMENT ACCOUNTS	_____
OTHER (DESCRIBE)	_____	OTHER OBLIGATIONS (DESCRIBE)	_____
_____	_____	_____	
TOTAL CURRENT ASSETS	$_____	_____	
HER ASSETS		TOTAL LIABILITIES	$_____
REAL ESTATE	_____		
FURNITURE	_____		
AUTO	_____		
TOTAL	_____	NET WORTH	_____
TOTAL	$_____	**TOTAL**	$_____

ARE YOU AN ENDORSER ON ANY PROMISSORY NOTES, MORTGAGES, BONDS, ETC., OF OTHERS?_____

IF YES, EXPLAIN FULLY_____

HOW MUCH MONEY ARE YOU PREPARED TO INVEST IN DEALERSHIP?_____

WHEN WILL THIS AMOUNT BE AVAILABLE?_____

IF CERTAIN ASSETS LISTED ABOVE ARE TO BE LIQUIDATED, PLEASE EXPLAIN HOW LIQUIDATION WILL BE EFFECTED_____

WILL ANY FUNDS YOU PLAN TO INVEST BE ENCUMBERED?_____ IF ENCUMBERED, STATE FROM WHOM BORROWED, TERMS AND RESTRICTIONS_____

IF ANOTHER OR OTHERS WILL HAVE A FINANCIAL INTEREST IN THE DEALERSHIP, FURNISH THE FOLLOWING INFORMATION REGARDING HIM (THEM):

	NAME OF INVESTOR(S)	AMOUNT OF INITIAL INVESTMENT	PORTION OF INVESTMENT OWNED	PORTION OF INVESTMENT BORROWED
1				
2				
3				
4				
5				

[fol. 431]

418

531

APPLICANT'S STATEMENT — CONTINUED

DO ANY OF THE INVESTORS HAVE A FINANCIAL INTEREST IN ANY OTHER AUTOMOBILE DEALERSHIP? _____

IF YES, LIST INVESTOR'S NAME, DEALERSHIP NAME, TOWN AND STATE, LINES HANDLED, AND PER CENT INTEREST IN EACH CASE

_____

_____

_____

WILL THE BORROWED FUNDS BE A LIABILITY OF THE DEALERSHIP? _____

FOR THE PURPOSE OF SECURING CREDIT AND OTHER CONSIDERATIONS, THE UNDERSIGNED FURNISHES THE FOREGOING STATEMENT AND INFORMATION WHICH FULLY AND TRULY SETS FORTH THE TRUE AND ACCURATE FINANCIAL CONDITION OF THE UNDERSIGNED ON THE _____ DAY OF _____ 19 _____.

THE UNDERSIGNED ACKNOWLEDGES AND AGREES

1 THAT THIS APPLICATION FORM HAS BEEN SUPPLIED TO HIM AS A CONVENIENCE

2 THAT RECEIPT OF THIS APPLICATION BY PONTIAC MOTOR DIVISION SHALL BE WITHOUT OBLIGATION ON ITS PART

3 NO ONE OTHER THAN THE GENERAL MANAGER, GENERAL SALES MANAGER, ASSISTANT GENERAL SALES MANAGER, REGIONAL MANAGER OR ZONE MANAGER OF THE PONTIAC MOTOR DIVISION HAS THE AUTHORITY TO APPROVE THE UNDERSIGNED'S APPLICATION FOR A PONTIAC DEALER SELLING AGREEMENT OR A FINANCIAL INTEREST IN A PONTIAC DEALERSHIP, THAT SUCH APPROVAL, IF GIVEN, WILL BE WRITTEN, THAT ANY EXPENDITURES MADE, OR COMMITMENTS ASSUMED BY THE UNDERSIGNED PRIOR TO RECEIPT BY THE UNDERSIGNED OF SUCH WRITTEN APPROVAL SHALL BE THE SOLE RISK AND RESPONSIBILITY OF THE UNDERSIGNED WITHOUT ANY LIABILITY OR OBLIGATION WHATSOEVER ON THE PART OF PONTIAC MOTOR DIVISION.

4 ANY MATERIAL MISREPRESENTATION, WHETHER INTENTIONAL OR UNINTENTIONAL, IN THE INFORMATION SUBMITTED BY THE UNDERSIGNED IN THIS APPLICATION FORM OR OTHERWISE IN CONNECTION WITH THIS APPLICATION SHALL BE GROUNDS UPON WHICH PONTIAC MOTOR DIVISION MAY IMMEDIATELY TERMINATE ANY PONTIAC DEALER SELLING AGREEMENT EXECUTED BY THE UNDERSIGNED AND PONTIAC MOTOR DIVISION FOLLOWING SUCH WRITTEN APPROVAL OF THIS APPLICATION

WITNESS _____ SIGNATURE _____

EXHIBIT No. 9 TO DEFENDANT'S EXHIBIT No. 11

[fol. 534]

FOREWORD

The purpose of this pamphlet is to explain in broad outline the basic facts and principles underlying the Dealer Investment Plan of the Motors Holding Division, General Motors Corporation.

Specifically, this material explains why Motors Holding was organized, its objectives, how its Dealer Investment Plan operates so as to be of maximum assistance to General Motors Dealers, and the nature of the relations existing between Motors Holding and those Dealers using its Service.

MOTORS HOLDING DIVISION

GENERAL MOTORS CORPORATION

534

[fol. 535]

THE NEED
THE OPPORTUNITY
AND THE OBJECTIVE

General Motors requires outlets for the sale of its various consumer products in all markets where those products are salable. In the case of its automotive products, that means practically everywhere. Its policy is to distribute such products through independent merchants, or dealers, who operate on their own capital for their own profit, in such a manner as they themselves may determine. Character, capacity, the willingness to work with the ambition to progress, as well as the requisite capital, have long been recognized as essential ingredients in the success of any business. The entire history of enterprise demonstrates the futility of expecting success where any one of these prime essentials is lacking to an important degree. And this particularly applies to the retailing of automobiles and commercial vehicles.

To synchronize these essential ingredients with the right location at the right time, and to do this on a broad scale, involves difficulties. It frequently happens that an individual offers the desirable personal qualifications, but through circumstances, is not in possession of adequate capital to finance a dealership

[fol. 536]

properly. Thus, to promote ways and means of providing capital to those who can qualify appears to be both sound and desirable. Hence the need!

The recognition of the need led, in 1929, to the development of the Motors Holding Plan, now operated by the Motors Holding Division.

The objective is to assist in the development of quality dealers, adequately and independently financed and operated, wherever needed.

The plan was designed to provide a source of capital for eligible individuals on such a basis as would enable them, as a result of their own constructive efforts, ultimately to become independent merchants operating on their own capital created through the possibilities of the plan. It might well be said that General Motors could hardly use its resources to better purpose than by promoting its objectives through providing an opportunity for intelligent and ambitious employes of General Motors or its dealers or any other individuals to acquire for themselves a successful business and financial security.

In furtherance of this philosophy, the following three categories represent typical circumstances where Motors Holding capital frequently is desirable:

1. To supplement a prospective dealer's capital resources to enable him to establish a new dealership, either succeeding an existing dealer or at an open point.

536

2. To recapitalize an existing dealership in order to strengthen the company's financial position and thus enable the dealer to take full advantage of the market.

3. To enable a dealer to buy out inactive partners or to more efficiently reorganize his capital structure.

REQUIREMENTS FOR INVESTMENT

Candidates for an investment by Motors Holding are selected by the Car Divisions (Buick, Cadillac, Chevrolet, Oldsmobile, Pontiac, and GMC Truck), Frigidaire, Detroit Diesel and Euclid, on exactly the same basis as all potential General Motors dealers. Essential qualifications are: character, experience, ability and capacity to progress.

The basic requirements for an investment by Motors Holding are:

1. The dealer must be recommended by the Division having jurisdiction.

2. The dealer must have demonstrated sales and management ability.

3. The franchise must offer a satisfactory sales and profit potential.

4. The dealer must make a satisfactory investment, the exact amount of which will depend on the circumstances but

[fol. 538]

in no case less than 25% of the total required capital.

5. The dealer must subscribe to sound merchandising policies based on the experience and practices of successful dealers. These principles have been summarized in "Policies of Motors Holding as a Stockholder in Dealership Corporations" issued by Motors Holding Division.

INVESTMENT PROCEDURE

Every effort is made to facilitate the prompt handling of an investment application. The normal procedure may be outlined as follows:

1. Applicants for Motors Holding investment service should first confer with the Car Division Zone Manager.
2. When a mutual agreement is reached between the applicant and the Car Division Zone Manager concerning an available car franchise, the Zone Manager submits a preliminary survey to his central office which recites the basic investment factors that must be considered.
3. Following the Car Division approval, this survey passes to General Motors Corporation Central Office for clearance.

535

[fol. 539]

4. Upon notice of clearance from General Motors Corporation Central Office, the local Motors Holding Branch Manager investigates the proposed investment and forwards the Investment Survey, along with his recommendations to the Motors Holding Executive Offices for final analysis and decision.

5. When the investment is approved, Motors Holding takes immediate action to have the new company organized and to consummate the completion of the investment. This generally requires only a few days and is finalized at the new dealer point by the Motors Holding representative in cooperation with the Dealer.

THE INVESTMENT PLAN

Dealer's Minimum Investment

The Dealer's initial investment must be a minimum of 25% of the total required capital of the dealership, it may be more—in fact, the dealer is expected to use all his available investment funds in the enterprise. Motors Holding provides the balance to adequately capitalize the dealership.

When an investment is agreed upon, the Dealer is elected President and a

[fol. 540]

Director of the company. He appoints all its personnel and is directly responsible for the management of the enterprise. Motors Holding retains voting stock control of the company during the period in which it owns stock.

The Dealer makes his investment in the dealer company by the purchase of $100 par Class B (non-voting) Stock. Motors Holding Division makes one-half of its investment in 6% long term notes and one-half through the purchase of $100 par Class A (voting) Stock. Shares of each class participate equally in profits on a per-share basis.

Dealer's Compensation and Profit Sharing Under the Plan

In addition to his salary for operating the dealership, the Dealer receives an annual cash bonus for successful management amounting to 33⅓% of the net profits of the dealer company in excess of 15% per annum on the total funds invested, including notes. This bonus is paid by the dealer company on a calendar basis and becomes a direct expense of the business.

A bonus will be paid for the first fractional year of operation if more than 15% per annum is realized on the total funds invested, including notes. Where a bonus is not earned during the first fractional year, the initial bonus period will be extended to include the first fractional year plus the following calendar year.

[fol. 541]

In addition to his salary and bonus, the Dealer is entitled to share, as a stockholder, in all net earnings of the company, INCLUDING THE FIRST 15% simultaneously and proratably with Motors Holding on a per-share basis.

Example of Capital and Profit Distribution

To illustrate bonus calculation and profit distribution, the following example shows the results in a dealership having a total investment, including notes, of $100,000 ($62,500 stock and $37,500 notes), a minimum investment on the part of the Dealer of 25% and a year's profit, *after taxes, and interest on 6% notes and before bonus* of $36,000 or a 36% return.

	Stock Investment	*Number of Shares*	*% Stock-Ownership*
Dealer—(Class B Stock)	$25,000	250	40%
M.H.D.—(Class A Stock)	37,500	375	60%
Total—Outstanding Stock	$62,500	625	100%

Distribution of Profits

Year's Profit of Company	$36,000
Dealer receives a bonus of 33⅓% of earnings above $15,000 (15% on total investment, including notes, of $100,000)	7,000
Year's Net Profit, *After Bonus*	$29,000
Dealer owning 40% of total capital stock receives 40% of Year's Net Profit, *After Bonus*	$11,600
Motors Holding owning 60% of total capital stock receives 60% of Year's Net Profit, *After Bonus*	17,400
Total	$29,000

541

[fol. 542]

Recapitulation

Dealer	
Bonus	$ 7,000
Equity in Stock Earnings	11,600
Total Dealer's Share	$18,600
M.H.D.	
Equity in Stock Earnings	17,400
Total	$36,000

If the Dealer invests more than 25% of the total required capital or as his equity in the dealer company increases, through the operation of the Plan, his share of the earnings increases.

For example: using a $100,000 company with annual earnings (after taxes and after interest on 6% notes) of $36,000 with the dealer's investment 50% of the total capital, the distribution of earnings would be as follows:

	Dealer	*M.H.D.*	*Total*
Stock Investment	$50,000	$25,000	$75,000
Earnings:			
Bonus	$ 7,000	None	$ 7,000
Allocation First 15% of Earnings	10,000	$ 5,000	15,000
Allocation Balance of Earnings remaining after Bonus	9,333	4,667	14,000
Total Earnings	$26,333	$ 9,667	$36,000

Distribution of Losses

In the event of losses in the dealership, such losses up to 15% of the total outstanding stock are shared proratably based on stock holdings, by Motors Holding and the Dealer. Losses above an amount equal to 15% of the total outstanding stock are assumed by the Dealer up to the amount of his investment.

[fol. 543]

Option Agreement

At the time Motors Holding makes an investment in a dealership, it enters into an agreement with the Dealer which provides, among other things:

1. That the Dealer shall have the option to purchase Motors Holding's stock in the dealership from his dividends and bonus funds. In fact, to assure the prompt acquisition of its stock, the agreement requires that he use all of his dividends and at least one-half of his bonus funds for this purpose.

2. That when M.H.D.'s stock interest has been reduced to 20% of the stock purchased by it, if there are any notes outstanding in the hands of M.H.D., they must be retired by the dealer company and/or purchased by the dealer before the balance of M.H.D.'s stock may be reduced.

3. That in the event the Dealer's connection with the dealership is terminated by incapacity, death, resignation, or removal, Motors Holding Division will, if the dealer company is to continue in business, purchase his stock and dealer company notes. In the event the dealership is discontinued, the Dealer is paid his share of the proceeds in liquidation.

The latter provision insures the Dealer prompt and full settlement for his interest and, in the event of his decease, usually relieves his estate of the necessity of liqui-

[fol. 544]

dating with the inevitable heavy dissipation of assets.

Additional Information

The fact that Motors Holding Division is a part of General Motors Corporation in no way affects the status or relationship of the Dealer with respect to his responsibilities under the franchise.

The President, who is always the Dealer, is elected chief executive officer with full power and authority to administer the affairs of the company in accordance with the policies adopted by the Directors.

The Secretary-Treasurer is responsible for maintaining the company's records and accounts.

The President appoints all but the elected personnel and, as chief executive officer, is wholly responsible for securing a proper sales and service volume and a satisfactory net profit.

When Motors Holding has an investment, the dealership is assured of adequate capital to meet all necessary requirements. Should the initial investment prove insufficient, additional capital is available if the need for it is indicated.

Following an investment by Motors Holding, its representatives maintain frequent contact with the Dealer for the purpose of counseling with him with respect to the financial and operating problems of the dealership.

Motors Holding Division, General Motors Corporation, reserves the right to make changes in its Dealer Investment Plan at any time without notice.

[fol. 545]

PROVISIONS OF MOTORS

INVESTMENT	Dealer
	M.H.D.
STOCK OWNERSHIP	Dealer
	M.H.D.
DEALER'S BONUS	Dealer
ALLOCATION OF SURPLUS remaining after payment of Dealer's Bonus	Class B Stock
	Class A Stock
RETIREMENT OF NOTES	Dealer Corporation
	Special Provision
	Dealer

545

[fol. 546]

HOLDING INVESTMENT PLAN

Required to invest at least 25% of total capital, in Class B (non-voting) Stock.

Invests balance up to 75% of required capital, equally divided between 6% notes and Class A (voting) Stock.

$100 par (non-voting) Class B Stock.

$100 par (voting) Class A Stock.

Receives a bonus of one-third of net profits, after taxes, above 15% per year on the funds invested, including notes.

Participates proratably with Class A Stock.

Participates proratably with Class B Stock.

45% of each calendar year's earnings available for dividends, or the amount required to pay off the notes entirely, whichever is the lesser, *must* be used, and not later than January 15th of the ensuing year, to retire notes until M.H.D.'s stock interest has been reduced to 20% of the stock purchased by it. Thereafter, up to 70% of the earnings *may* be used to retire notes. The balance will be available for dividends of which the operator *may* use his share to purchase notes held by M.H.D.

When M.H.D.'s stock interest has been reduced to 20% of the stock purchased by it, if it then holds any notes of Dealer Company, they must be retired by the dealer company and or purchased by the dealer before the balance of M.H.D.'s stock may be reduced.

May purchase notes from M.H.D. with his earnings from the dealer company, when special provision applies.

[fol. 547]

PROVISIONS OF MOTORS

RETIREMENT OF M.H.D.'S STOCK INTEREST	Dealer Corporation
	Dealer
ALLOCATION OF LOSSES (DEFICIT)	Class B Stock
	Class A Stock

mhd

[fol. 548]

HOLDING INVESTMENT PLAN

Concurrently with the retirement of notes, unless the 20% special provision applies, 25% of earnings available for distribution is to be used to retire Class A Stock when the remaining 30% is simultaneously distributed as dividends. When there are no notes outstanding, 50% of available earnings is to be used to retire Class A Stock when the remaining 50% is simultaneously distributed as dividends.

Required to use at least 50% of his bonus and all of his dividends for the purchase of M.H.D.'s Class A Stock, subject to minimum stock retention by M.H.D., which stock must be immediately converted into Class B Stock.

Shares proratably with Class A Stock in deficits up to 15% of total outstanding Capital Stock and thereafter to full extent of its par value.

Shares proratably with Class B Stock in deficits up to 15% of total outstanding Capital Stock.

q.m

[fol. 549]

GMAD

ATLANTA 3, GEORGIA
Room 623 Rhodes-Haverty Bldg.
134 Peachtree Street, N. W.

BOSTON 16, MASSACHUSETTS
Room 1105 Park Square Building
31 St. James Avenue

BUFFALO 2, NEW YORK
Room 1606 Liberty Bank Building
420 Main Street

CHARLOTTE 2, NORTH CAROLINA
Room 814 Johnston Building
212-16 South Tryon Street

CHICAGO 11, ILLINOIS
Room 214
840 North Michigan Avenue

CINCINNATI 2, OHIO
Room 1128 Federal Reserve Bank Bldg.
108 West 4th Street

CLEVELAND 13, OHIO
Room 2414-15 Terminal Tower Bldg.
50 Public Square

DALLAS 1, TEXAS
Room 406 Trinity Universal Building
320 North Harwood

DENVER 2, COLORADO
Room 1108 Denver Club Building
500 — 17th Street

DETROIT 2, MICHIGAN — No. 1
Room 10-267 General Motors Building
3044 West Grand Boulevard

DETROIT 2, MICHIGAN — No. 2
Room 10-269 General Motors Building
3044 West Grand Boulevard

KANSAS CITY 6, MISSOURI
Room 1600 Power & Light Building
160 West 14th Street

LOS ANGELES 5, CALIFORNIA — No. 1
Room 512-13 Tishman Building
3338 Wilshire Boulevard

LOS ANGELES 5, CALIFORNIA — No. 2
Room 512-13 Tishman Building
3338 Wilshire Boulevard

MINNEAPOLIS 2, MINNESOTA
Room 2118 Foshay Tower Building
9th at Marquette

NEW YORK 19, NEW YORK
Room 821 General Motors Building
1775 Broadway

PITTSBURGH 22, PENNSYLVANIA
Room 726 One Gateway Center
420 Fort Duquesne Boulevard

ST. LOUIS 8, MISSOURI
Room 808 Sisteman Building
111 South Bemiston Avenue

SAN FRANCISCO 4, CALIFORNIA
Room 1215 First Western Bank Bldg.
405 Montgomery Street

WASHINGTON 6, D. C.
Room 411 Cafritz Building
1625 Eye Street, N. W.

GM

549

[fol. 550]
IN THE SUPERIOR COURT
IN AND FOR THURSTON COUNTY
DEFENDANT'S EXHIBIT No. 12

REALTY OCCUPIED BY CHEVROLET MOTOR DIVISION AND GENERAL MOTORS PARTS DIVISION IN THE STATE OF WASHINGTON
1949 - 1950 - 1951 - 1952 AND FIRST HALF 1953

DIVISION	LOCATION AND ADDRESS	USE	SQUARE FOOTAGE	DATES OCCUPIED FROM	TO
Chevrolet Motor Division	White-Henry-Stuart Building Seattle	Office	434	11/1/48	5/11/50
			857	5/12/50	10/31/54
General Motors Parts Division	1061 Sixth Avenue Seattle	Parts Warehouse	12,016	7/1/41	6/30/54

REALTY OCCUPIED BY [illegible]
DIVISIONS AND SUBSIDIARIES
IN THE STATE OF WASHINGTON
1949 - 1950 - 1951 - 1952 AND FIRST HALF 1953

DIVISION	LOCATION AND ADDRESS	USE
Allison Division	501 Lane Street -- Seattle	Office
GMC Truck & Coach Division	600-622 Fifth Avenue -- Seattle	Showroom
GMC Truck & Coach Division	200-228 Dawson Street -- Seattle	Wholesale Operations
GMC Truck & Coach Division	1207-9-11 Broadway -- Seattle	Parking Lot
GMC Truck & Coach Division	501 Lane Street -- Seattle	Office
GMC Truck & Coach Division	814 E. Howell Street -- Seattle	Sales Lot
GMC Truck & Coach Division	1703 Broadway -- Seattle	Showroom
United Motors Service Division	First Avenue & Hudson -- Seattle	Warehouse
United Motors Service Division	Second Avenue & Hudson -- Seattle	Parking Lot
United Motors Service Division	Hudson, between First & Second Avenues Seattle	Warehouse
General Motors Acceptance Corporation	White-Henry-Stuart Building -- Seattle	Office
General Motors Acceptance Corporation	Old National Building -- Spokane	Storage
General Motors Acceptance Corporation	Old National Building -- Spokane	Office
General Motors Acceptance Corporation	Rust Building -- Tacoma	Office
General Motors Acceptance Corporation	A. E. Larsen Building -- Yakima	Office
Motors Insurance Corporation	Securities Building -- Seattle	Office
Motors Insurance Corporation	Hutton Building -- Spokane	Office
Hertz Drivurself Stations, Inc. (Pacific)	Tricoach Building -- Seattle	Garage and Office
Hertz Drivurself Stations, Inc. (Pacific)	Thomas Street & First -- Seattle	Garage and Office

REALTY OCCUPIED BY GENERAL
DIVISIONS AND SUBSIDIARIES
IN THE STATE OF WASHINGTON
1949 - 1950 - 1951 - 1952 AND FIRST HALF 1953

ON	LOCATION AND ADDRESS	USE	SQUARE FOOTAGE	DATES OCCUPIED FROM	TO
n Division	501 Lane Street -- Seattle	Office	400	5/1/51	12/31/52
uck & Coach Division	600-622 Fifth Avenue -- Seattle	Showroom	40,000	9/1/48	8/31/68
uck & Coach Division	200-228 Dawson Street -- Seattle	Wholesale Operations	(B)46,534 (L)78,480	5/10/49	10/2/50
uck & Coach Division	1807-9-11 Broadway -- Seattle	Parking Lot	5,400	4/1/46	2/28/49
uck & Coach Division	501 Lane Street -- Seattle	Office	1,100	11/1/50	10/31/56
uck & Coach Division	814 E. Howell Street -- Seattle	Sales Lot	6,000	4/1/46	3/18/49
uck & Coach Division	1703 Broadway -- Seattle	Showroom	32,601	3/1/47	12/31/49
Motors Service Division	First Avenue & Hudson -- Seattle	Warehouse	30,625	7/1/41	5/31/49
Motors Service Division	Second Avenue & Hudson -- Seattle	Parking Lot	22,750	12/1/46	5/31/49
Motors Service Division	Hudson, between First & Second Avenues Seattle	Warehouse	48,600	6/1/49	5/31/59
Motors Acceptance Corporation	White-Henry-Stuart Building -- Seattle	Office	4,738	1/15/48	1/14/54
Motors Acceptance Corporation	Old National Building -- Spokane	Storage	43	3/1/49	11/30/50
Motors Acceptance Corporation	Old National Building -- Spokane	Office	1,963	5/1/48	10/31/53
Motors Acceptance Corporation	Rust Building -- Tacoma	Office	463 814	5/1/48 1/1/50	12/31/49 12/31/53
Motors Acceptance Corporation	A. E. Larsen Building -- Yakima	Office	340 680	12/1/48 7/1/49	6/30/49 11/30/53
Insurance Corporation	Securities Building -- Seattle	Office	1,980	2/4/50	1/14/55
Insurance Corporation	Hutton Building -- Spokane	Office	1,394	11/1/49	10/31/53
Drivurself Stations, Inc. Pacific)	Tricoach Building -- Seattle	Garage and Office	(B)13,500 (L)33,000	5/1/49	8/31/53
Drivurself Stations, Inc. Pacific)	Thomas Street & First -- Seattle	Garage and Office	14,400	6/1/46	6/17/49

[fol. 552]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 36001

GENERAL MOTORS CORPORATION, Respondent and Cross-appellant, v. THE STATE OF WASHINGTON *et al.*, Appellants.

OPINION EN BANC. December 6, 1962

[fol. 553] Cross-appeals from a judgment of the Superior Court for Thurston County, No. 28036, Charles T. Wright, J., entered March 16, 1961. *Affirmed in part; reversed in part.*

Action to recover taxes paid, and for injunctive relief. Both parties appeal from a judgment partially in favor of the plaintiff.

The Attorney General, John W. Riley and *Timothy R. Malone, Assistants,* for appellant.

Rosling, Williams, Lanza & Kastner and *DeWitt Williams* (*Aloysius F. Power, Donald K. Barnes,* and *Thomas J. Hughes,* of counsel), for respondent.

FINLEY, C. J.—This action was commenced by respondent cross-appellant, General Motors Corporation, for a refund of certain business and occupation taxes imposed by the [fol. 554] State Tax Commission and for injunctive protection against similar assessments in the future.

The taxes involved were measured by gross receipts to General Motors from wholesale sales of automobiles, trucks, parts and accessories to independent retail dealers in the state. Assessments were made pursuant to RCW 82.04. General Motors duly protested the assessments, and hearings were held by the Tax Commission. The hearings resulted in Tax Commission orders concluding that General Motors had conducted business activities within the state of Washington during the audit periods in question, which are from January 1, 1949, through June 30, 1953, which were sufficiently related to the sales in question to meet the

requirements of the due process clause of the federal and state constitutions and the commerce clause of the federal constitution. Accordingly, the tax was imposed. Thereupon, General Motors sought relief in the Superior Court for Thurston County. The superior court granted portions of General Motors' prayer for relief and denied the balance. Both parties have appealed.

The amounts of gross receipts from the transactions which are included in the assessment base are not in question. There is no question either as to the rate of the tax, which, during the audit periods herein involved, was three-tenths of 1 per cent (.003%), measured by the taxpayer's gross receipts from its taxable activities (wholesaling). The computation of the tax assessment and the interest involved have been settled by stipulation of the parties. The basic question presented to this court is whether General Motors is liable for the tax assessed.

General Motors is a Delaware corporation, qualified to do business in Washington. The corporation conducts much of its business through divisions which operate substantially independently of each other. The transactions of only Chevrolet, Pontiac, Oldsmobile, and General Motors Parts Divisions are included in the tax base involved in this action, although other General Motors divisions and subsidiaries are engaged in business within this state.

General Motors owns and operates factories for the [fol. 555] manufacture of automobiles, trucks and other merchandise. Sales of these products are made by General Motors to retail dealers in this state pursuant to orders initiated by the dealers. All of the products herein concerned are manufactured outside of the state and are shipped into the state. Activities conducted primarily outside the state include the design, engineering, fabrication, assembly and delivery of products; the procurement of materials, components and supplies; the general, executive, operating, financial and sales management; the receipt, processing, recording, approving, accepting and filling of orders; the billing and receipt of payment, the investigation, approval and execution of customer contracts (dealer franchises); the investigation and extension of credit; the composition and placement of advertising; and others.

During the audit periods here in question, the trial court found that General Motors was engaged in business activity within the state. This activity involved the sale of automobiles, trucks, parts and accessories to retail dealers, and also included establishment and maintenance of effective dealer representation, partially accomplished by arranging various sales and incentive contests and programs offered and conducted, separately or jointly, with the dealer and other components of the General Motors organization; national and local advertising programs conducted by General Motors through various media; joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; and on the job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of General Motors' products.

In order to provide for the distribution and sale of the manufactured products of Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions, General Motors maintains organizations of employees serving each of its major subdivisions on a national, regional, zone and district level. This case is concerned with General Motors' business ac- [fol. 556] tivities conducted within the state of Washington by its sales and promotion organizations—specifically, the divisions mentioned above during the audit periods here in question.

At all times during the audit periods, the state of Washington was included within the western region of General Motors' national organization covering eleven western states. Regions are divided up into geographical zones. At all times relevant herein, Washington was part of the Portland zone, which also included the states of Oregon and Idaho, the area that has now become the state of Alaska, and portions of Montana and Wyoming.

Each zone, including the Portland zone, is composed of geographical districts for the Chevrolet, Oldsmobile and Pontiac divisions. Within each district in the state of Washington are located the various retail dealers of Gen-

eral Motors' manufactured products, to whom wholesale sales of the manufactured products are made by General Motors.

The Portland zone organization for each of General Motors' Chevrolet, Pontiac and Oldsmobile divisions includes a staff of field representatives. Each zone organization is similar in all material respects, except that Pontiac and Oldsmobile have a lesser number of dealers than Chevrolet, and a correspondingly lesser number of districts. The operation of the General Motors Parts Division and certain differences between the Chevrolet organization and the others will be described later. Generally, a zone office is comprised of a zone manager and an assistant zone manager, a business management manager, a parts and service manager, an office manager—car distributor, a number of clerical assistants, and service representatives and managers for each of the zones' districts. We are most concerned with the activities of the district managers, and the functions of other personnel need not be described in detail.

General Motors' field organizations devote the bulk of their efforts to the assistance of General Motors' retail dealers with the view of obtaining maximum conformance to the specifications and conditions required of the dealers pursuant to the "Dealer Selling Agreement," the terms of which will be described later.

[fol. 557] General Motors achieves its wholesale sales of the automobiles, trucks, parts and accessories by the development and maintenance of a strong retail dealer representation, and General Motors' zone employees, including district managers, are charged with the responsibility of developing, maintaining, and promoting retail dealer representation, along with the general duties of promoting, developing, and maintaining good will and public esteem for General Motors' products. The trial court found that the activities of the field organization have a direct effect upon the sales and operations of the independent retail dealers.

The district manager's function includes serving as the zone manager's direct contact with the dealer at his place of business, receiving from him his complaints, observing his operations, reporting thereon to the zone office, and passing on to him such advice and counsel as the zone office

can make available to strengthen his operation and make it more profitable, including passing on any knowledge gained of competitive products. District managers' contact and relationship with the retail dealers is direct, almost entirely inside the state of Washington, and generally at the dealer's place of business. The frequency of contacts depends upon the size of the dealership and the nature and extent of the problems confronting the dealer and General Motors. The district manager usually resides within his assigned territory. With the exception of certain activities in relation to the Chevrolet Division, district managers have no Washington offices; however, they frequently use their place of residence for business phone calls and receipt of business mail. District managers do not accept or approve credit, receive payment, or make delivery.

The relationship between General Motors and each of its Chevrolet, Pontiac, and Oldsmobile retail dealers is defined by a written contract called a "Dealer Selling Agreement," which is in all material respects uniform for all dealers in the state. The dealer operates a retail store for the sale of automobiles, and sometimes also trucks, supported by the sale of parts and accessories, a repair and servicing operation according to customers' needs, and the marketing of [fol. 558] used cars taken in trade. Dealers are individual proprietorships, partnerships, or corporations, having no corporate relationship to General Motors, except that in some instances another division, Motors Holding Division, lends, temporarily, portions of the substantial capital required to initiate or maintain a dealership. The trial court found that the relationship between retailers and General Motors is that of independent purchaser and seller, and it cannot be said that General Motors had a "dealer organization" within its hierarchy.

The dealer's facilities are his own. He provides the tools, supplies, signs, and an inventory of parts and accessories. New and used automobiles are also owned by the dealer, subject, in the case of new automobiles, to financing arrangements with banks or finance companies, which frequently include General Motors Acceptance Corporation, a wholly owned corporate subsidiary of General Motors. The "Dealer Selling Agreement" provides certain restric-

tions on the dealers' use of their own facilities and equipment. A dealer is expected to maintain a place of business, a sales room, and a service department satisfactory to General Motors. The dealer may not establish or move a branch sales office or service organization without written consent of General Motors. Every dealer is required to, and does, submit his books, records, and accounts to General Motors, and to maintain a satisfactory uniform accounting system designated by General Motors. Every dealer is required to meet minimum capital requirements as specified and determined by General Motors. Every dealer is required to, and does, maintain and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally and locally by General Motors. Every dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. Dealers uniformly agree to buy such special tools as are developed by General Motors for the servicing of their products.

To each dealer is assigned a "zone of influence," within which he enjoys the distinction of being the only retail [fol. 559] outlet of the specific product for which he is dealer. He is also considered responsible for development of General Motors' share of the retail market within his designated area.

The dealer submits quarterly "projections" of his requirements for automobiles, parts and accessories, to his district manager. Thereafter, an order is sent to General Motors' zone office, usually by mail, sometimes by telephone, and infrequently by the district manager, who then mails or delivers the order to the zone office. Orders are accepted or rejected at the zone office or at the factory; and, if accepted, they are filled by shipment from the factory by common carrier, f.o.b. the factory. If a dealer's orders are less than his "projections," the district manager, occasionally in conjunction with the zone manager, "counsels and advises" the dealer to determine the cause and to assist the dealer in taking corrective action.

The Parts Division of General Motors has the function of warehousing and shipping parts and accessories for Chev-

rolet cars and trucks and for Pontiac and Oldsmobile automobiles. Sales are made by this division to retail dealers on order. The division has a warehouse at Portland, Oregon; and during most of the period herein involved it also had a warehouse at Seattle. The warehouse at Seattle carried the "heavy volume" items. The less frequently called for items were ordered from the warehouse in Portland. Each dealer was furnished with two order forms. On one, he ordered from the Seattle warehouse items stocked there. On the other, he ordered directly from Portland items not carried in Seattle. Business and occupation tax was paid to the state on all shipments from the Seattle warehouse, and these taxes are not contested. Only the taxes measured by the gross proceeds of sales by the Portland warehouse to retail dealers in Washington are in dispute. The trial court found that the transactions of the Portland warehouse of the General Motors Parts Division were in no way related to the transactions of the Seattle warehouse of that division.

All of General Motors' retail dealers for Chevrolet, Pontiac, and Oldsmobile obtained their supply of parts and ac- [fol. 560] cessories for resale and servicing of new and used automobiles during the audit period in question from the General Motors Parts Division.

Chevrolet Division's operations with respect to the counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum, and Walla Walla are identical to those of the other divisions generally described above. Sales to retail dealers in these counties have been described by the parties as Chevrolet Class "B" transactions, and we will refer to them by that designation. The operations and sales to retail dealers with respect to the balance of the state, which hereinafter will be referred to as Chevrolet Class "A" transactions, are substantially similar, except that during the relevant periods involved Chevrolet Division maintained a branch office in Seattle. This office was supervised by the Portland zone manager for a time, and later a Seattle zone office was established. General Motors has paid the tax since the establishment of the new zone office, and that tax is not contested. While the Seattle branch office was under the direction of the Portland office, it performed the function of expediting deliveries and per-

forming limited promotional work. The trial court concluded that the presence of the Seattle office and the service that it performed had a direct connection with Chevrolet Class "A" sales by the Portland zone office; that such sales were within the territorial jurisdiction of the state; and that the tax measured by these transactions was not violative of the due process clause or the commerce clause. Accordingly, the Chevrolet Class "A" transactions were held taxable. This conclusion is a subject of the cross-appeal by General Motors.

In accordance with a contractual arrangement, retail dealers make annual returns of obsolete parts to General Motors and are allowed credits therefor. The trial court concluded that these parts returns were in fact repurchases by General Motors, and that the amounts attributable to these transactions are properly includable in the gross proceeds of sales of products by General Motors to Chevrolet Class "A" retail dealers. This conclusion is also a subject of the cross-appeal by General Motors.

[fol. 561] With respect to all other transactions included within the tax base, the trial court adjudged that General Motors was entitled to recover judgment of refund to the extent of $88,479.44, with interest. General Motors was also granted an injunction against the State of Washington, the Tax Commission, and its members, preventing assessment or collection of any business and occupation tax in connection with transactions past and future not materially different from the transactions involved in this action.

We will proceed by first analyzing the problems involved with respect to those transactions that are the subject of the Tax Commission's appeal. Some of our discussion will relate incidentally to that portion of the cross-appeal dealing with Chevrolet Class "A" transactions.

We note preliminarily that, in our opinion, like the tail the follows the dog, the tax measured by the gross proceeds of sales by the Portland warehouse of the General Motors Parts Division must stand or fall with the taxes measured by the gross proceeds of the other transactions. Although the General Motors Parts Division does not have a field organization similar to that of the other divisions, the sales of parts and accessories is inseparable from that activity which

relates to the development and maintenance of dealer representation and stimulates demand for the automobiles and trucks that parts and accessories accompany. Furthermore, the parties have not segregated their arguments with respect to the activities of the different divisions, so it is safe to assume that the activities of the field organizations of Chevrolet, Pontiac, and Oldsmobile are properly attributable to the corresponding sales by Chevrolet, Pontiac and Oldsmobile retail dealers of parts and accessories wholesaled by General Motors Parts Division.

The first question presented in this case is whether there is a statutory basis for imposing a tax on General Motors for the activities conducted by it within the state during the relevant period involved.

[1] The trial court found that General Motors was engaged in business in the state of Washington at all times during the audit periods here in question. It also found that General Motors' activities, through its employees, had a [fol. 562] direct effect upon the sales and operations of the independent retail dealers. The business and occupations tax statute, RCW 82.04.220, imposes a tax on the privilege of engaging in business activities. General Motors accomplishes wholesale sales of its products to retail dealers within the state. Part of the activities involved in these wholesale sales take place elsewhere; *e.g.*, orders are filled, delivery made, and payment is received outside of the state. Nonetheless, business activities having a relation to wholesale sales are conducted in Washington.[1] These activities

[1]The trial court did not specifically find that the business activities conducted by General Motors were related to the wholesale sales consummated by General Motors to retail dealers, but such a finding is unnecessary in view of other specific findings mentioned above. Since the activities of General Motors had a direct effect on the sales of retail dealers, those activities necessarily had a direct effect on wholesale sales to retail dealers. The extensive field organization work undertaken by General Motors to assist retail dealers in maintaining a desired sales volume is performed because greater retail sales by retail dealers also means greater wholesale sales by General Motors to retail dealers. Significantly, the trial court refused to find that the activities of General Motors were unrelated to wholesale sales of General Motors to retail dealers.

provide an incident upon which the taxing statute operates.[2] Whether or not these activities are sufficiently related to the accomplishment of wholesale sales to base the tax on the gross receipts of all wholesale sales to Washington retail dealers is a question with constitutional law ramifications in relation to the *measurement* of the tax and not the *imposition* of the tax. On the facts indicated, we hold that there is a statutory basis for imposing the tax. We will now proceed to the crucial questions presented; *i.e.*, whether [fol. 563] the imposition of the tax measured by the gross receipts of all wholesale sales to Washington retail dealers is violative of the due process clauses of the federal and state constitutions or the commerce clause of the federal constitution.

Does the tax amount to an attempt by the State of Washington to extend its taxing powers beyond its borders? Or, to put it another way, are the gross proceeds included in the measure of the tax sufficiently related to the nexus of local activity conducted by General Motors to be within the state's power to tax?

[2] Much discussion by both parties in voluminous briefs and in oral argument relates to the significance of the presence or absence of a local office as a criterion for determining whether the state has power to tax a corporation involved in transactions which permeate state boundaries. We do not think it necessary to discuss in detail all of the authorities cited. It suffices to say that we are not per-

[2]We have examined Rule 193 promulgated by the Tax Commission, which it is contended binds the Tax Commission to an interpretation that transactions such as those involved here are beyond statutory coverage. Rule 193 was intended to be a general guide rather than a final interpretation as to transactions covered by the taxing statutes. The preface to the rule states: "Scope of this Rule: This rule governs all matters relating to interstate and foreign commerce. The diversity of problems involved limits the rule to a statement of general principles and the Tax Commission reserves the right to rule upon each question as it arises." It is our view that the Tax Commission's position in this case is consistent with its interpretation reflected in Rule 193, and further, that the Tax Commission did not irrevocably bind itself to a particular interpretation by virtue of Rule 193.

suaded that any case of the United States Supreme Court or of this court dictates the approach that presence or absence of a local office is *the* controlling factor. To allow tax immunity to those who direct business activities from a point just across the state line, regardless of the quantum and effect of local activity, would amount to a discrimination against those who have located offices within the state. And taxation of those who perform de minimis activities through a local office would be unreasonable and unjust.

Although location of an office within the state has been of assistance in characterizing the extent of operations and activities within a state (see *Norton Co.* v. *Department of Revenue* (1951), 340 U. S. 534, 95 L. Ed. 517, 71 S. Ct. 377; *Field Enterprises* v. *State* (1955), 47 Wn. (2d) 852, 289 P. (2d) 1010, *aff'd. per curiam*, 352 U. S. 806 (1956); *B. F. Goodrich Co.* v. *State* (1951), 38 Wn. (2d) 663, 231 P. (2d) 325, *cert. denied*, 342 U. S. 876 (1951)), the mere physical presence of an office within the state has never been the sole criterion for validating a state's assessment of a tax. Conversely, absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the [fol. 564] form of the operations. See *Brown-Forman Distillers Corp.* v. *Collector of Revenue* (1958), 234 La. 651, 101 So. (2d) 70, *cert. denied*, 359 U. S. 28 (1959).

The fact that extensive manufacturing and operational activities of General Motors occur elsewhere has no bearing on the question before this court. The state is not attempting to tax those activities, but rather is seeking to tax business activity in Washington measured by wholesale sales to Washington dealers. Thus, considerations of other activities performed by General Motors are irrelevant to the question of taxable activity in relation to wholesaling transactions. We are considering here only the wholesaling function and the effect of the activities of General Motors in Washington attributable to that function.

[3] Although the facts reveal that General Motors' activities in this state are substantial, no local office is maintained in this state, except for the Class "A" Chevrolet office in Seattle. The activities involved are extensive pro-

motional and service efforts. They pervade virtually every aspect of the retail dealer's operations. The General Motors field organization representatives are intimately associated with the retail dealers on matters pertaining to the dealers' accounting and business operational methods; the dealers' sales and service technique; the dealers' inventory of parts and accessories; the dealers' show-room and service facilities; and the dealers' used-car business. In addition to these tangible and directly-performed activities, other activities of a more subtle nature are engaged in within this state and in conjunction with dealers. General Motors' advertising is beamed in via television, exhibited by means of outdoors advertising, and distributed by way of newspapers and magazines. All of these activities are related to sales of General Motors in the sense that they tend to strengthen dealer representation and stimulate consumer demand. Because of the very nature of the activities, it cannot be said that General Motors directly participates in particular retail sales. Yet the activities undeniably have a very great effect in terms of increasing total retail sales in Washington, thereby increasing also wholesale sales. All of the transac- [fol. 565] tions measured by the tax imposed on these activities are in some degree affected by General Motors' organized promotional efforts.

According to the rule of the *Norton* case, *supra,* reiterated by this court in the *Goodrich* case, *supra,* where extensive business activity occurs within a state, taxation can only be avoided upon a showing that the activities are disassociated from the sales in question. Therefore, it is incumbent upon General Motors to make a showing of disassociation or, at a minimum, some degree of disassociation in order to remove from taxation that portion of sales not attributable to that activity. This has not been done. Although the mechanical aspects of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transaction occurs in Washington where the customer is located and where the demand for the manufactured product exists, in very large degree, as a result of General Motors promotional activities. *Field Enterprises* v. *State, supra;* cf. *Northwestern States Portland Cement Co.* v. *Minnesota* (1959), 358 U. S. 450, 3 L. Ed. (2d) 421, 79 S.

Ct. 357, 67 A. L. R. (2d) 1292. The activities of General Motors in Washington in relation to these sales provide a sufficient nexus upon which to base the tax. Thus, the state is taxing only that which takes place within its borders, and measuring the tax by transactions which relate sufficiently to the activities in question to be within the requirements of the due process clause.

We turn now to an examination of commerce clause considerations.

[4] The primary considerations for determining the limits of a state's power to tax activities connected with interstate commerce are: (1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage; the discrimination test. (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; the multiple burden test. *Washington-Oregon Shippers Co-op. Ass'n* v. *Schumacher* (1961), 59 Wn. (2d) 159, 367 P. (2d) 112; and cases cited therein.

[fol. 566] [5] It is alleged that, by virtue of RCW 82.04.440,[3] Washington businesses engaged in intrastate commerce receive a commercial advantage; or, conversely stated, that discrimination against interstate commerce results. The alleged commercial advantage arises when an out-of-state manufacturer is compelled to pay the Washington wholesale tax and a manufacturing tax in another state, while the local producer pays only the wholesale tax. However, the advantage, if any, does not result from the Washington imposition of a wholesale tax, but rather from the failure of Washington to impose a tax on the manufacturing activities within its jurisdiction. The essence of this contention is that it is necessary for Washington to tax local manufacturers for the privilege of producing to the same extent that their competitors are subject to taxation by other states. This is of course not only unneces-

[3]RCW 82.04.440 in essence provides that goods manufactured and sold within the state of Washington are only subject to a wholesale tax.

sary, *B. F. Goodrich* v. *State, supra,* but is also impossible, since there is neither a uniform practice of taxation nor tax rates by states in reference to manufacturing activities within their jurisdictions. Furthermore, this contention does not validly attack the imposition of the wholesale tax, since it is based upon an activity separate and distinct from manufacturing.

The tax in question is applicable to all who engage, within the state, in the business of making sales at wholesale. It is only that local activity which is being subjected to taxation. And the tax is imposed equally upon all who participate in the same activity within the state. Those involved in interstate commerce are not forced to bear any burden not borne by those exclusively engaged in intrastate commerce, so it cannot be said that the tax is discriminatory. *Washington-Oregon Shippers, supra; B. F. Goodrich Co.* v. *State, supra.*

[6] It is also contended that the state's imposition of a tax on the local wholesaling activities of a company which manufactures its products outside the state subjects that company to multiple tax burdens not borne by those companies which both manufacture and wholesale within the [fol. 567] state. (This contention is partially based upon RCW 82.04.440, which has been previously discussed.) This contention of multiple-burden taxation was made in *B. F. Goodrich Co.* v. *State* (1951), 38 Wn. (2d) 663, 668, 231 P. (2d) 325; *cert. den.* 342 U. S. 876, and it was answered as follows:

". . . Because some other state might exercise its undoubted right to tax the privilege of manufacture with respect to goods ultimately sold in Washington (*American Mfg. Co.* v. *St. Louis*, 259 U. S. 459, 63 L. Ed. 1084, 39 S. Ct. 522; see *Freeman* v. *Hewit*, 329 U. S. 249, 91 L. Ed. 265, 67 S. Ct. 274), this state need not forego its right to tax the business of selling those goods. Each state must derive its revenues from what goes on within its own borders. And if Washington's statute exempts local manufacturers from paying their tax as manufacturers, providing they also pay it as sellers, that, as appellant admits, can be of no concern to one who manufactures out of the state.

"Appellant engages in but one local taxable activity—selling—and as to this it is now taxed on a parity with all others who engage in like activity here. . . ."

We adhere to this position.

The tax is imposed upon business activity within the state. The measure of the tax is the proceeds from the sales attributable to that activity. No part of the tax is attributed to manufacturing or other activities taking place outside of the state. *Crown Zellerbach Corp.* v. *State*, 53 Wn. (2d) 813, 328 P. (2d) 884; *cert. denied*, 359 U. S. 531 (1958); *United States Steel Corp.* v. *State* (1957), 51 Wn. (2d) 224, 316 P. (2d) 1099. The fact that some other incident occurs elsewhere rendering General Motors liable for a different tax in another state does not mean that multiple burdens are occasioned as a result of the Washington tax, because repeated exactions of the same nature do not occur. *B. F. Goodrich Co.* v. *State, supra.* We hold that the tax in question is not violative of the commerce clause.

The statements heretofore made in relation to the validity of the tax measured by the gross receipts from Chevrolet Class "B" sales and Pontiac, Oldsmobile and General Motors Parts Divisions sales are for the most part applicable and dispositive of the questions raised by the cross-appeal. Not only are the same extensive promotional and [fol. 568] service efforts performed in connection with Chevrolet Class "A" sales to retail dealers, but additional activities were undertaken by the Seattle branch office to expedite delivery. A fortiori taxes measured by these transactions, were validly assessed.

With respect to the question raised concerning sales and returns of obsolete parts, the following is dispositive. The pertinent contractual provisions relating to the return of parts read as follows:

"5. A. During the months of August, September or October of each year, ... Dealer may return to Chevrolet one shipment of new, unused and undamaged Chevrolet (C & CX) parts purchased from Chevrolet, or purchased from an outgoing Chevrolet dealer as part of Dealer's initial Chevrolet parts stock, for a maximum credit value not to exceed four per cent (4%) of Dealer's net

purchases of such parts, excluding batteries and electrolyte, during the previous fiscal year beginning July 1 and ending June 30.

"B. The return of such parts shall be subject to the following conditions:

"(1) Only those Chevrolet (C & CX) parts will be eligible for return hereunder which were listed for service in any of the Chevrolet Dealers Parts and Accessories Price Schedules which were in effect during the current and two preceding fiscal years. Chevrolet will credit Dealer's account for such eligible return parts with the Dealer Net Prices therefor in effect at the time such parts are received by Chevrolet. . . ."

General Motors contends that returned parts transactions are rescinded sales rather than repurchases and, therefore, excludable from the gross proceeds of sales of products by General Motors to Chevrolet Class "A" retail dealers.

[7] It will be observed that contract provisions specify that dealers receive credit for returns in accordance with prices in effect at the time of the return rather than those in effect at the time of the original purchase. Thus, it is evident that the transactions are in fact repurchases and not rescinded sales. Furthermore, General Motors' contention is based upon the assumption that sales of parts are never final until the specific part is no longer returnable. We do not so interpret the contractual provisions. Accordingly, the [fol. 569] trial court was, in our opinion, correct in its conclusion that sales of these items were final, and that returned items were repurchased.

The decision of the trial court is hereby reversed with respect to the appeal initiated by the Tax Commission, and affirmed with respect to the cross-appeal initiated by General Motors.

Hill, Donworth, Weaver, Rosellini, Ott, Hunter, and Hamilton, JJ., concur.

[fol. 570]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 36001

Thurston County No. 28036

GENERAL MOTORS CORPORATION, a corporation, Respondent-Cross Appellant,

v.

THE STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, Appellants.

REMITTITUR

This is to certify that the opinion of the Supreme Court of the State of Washington filed on December 6, 1962, became the final judgment of this court in the above entitled case on January 7, 1963. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

One Thousand Four Hundred Thirteen and no/100 ($1,413.00) Dollars in favor of appellants and against General Motors, Corporation, a corporation

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 8th day of January, A.D. 1963.

William M. Lowry, Clerk of the Supreme Court, State of Washington.

cc: Court Reporter, Hon. John J. O'Connell, Mr. John W. Riley, Mr. Tim R. Malone, Rosling, Williams, Lanza & Kastner, Mr. DeWitt Williams, Mr. Donald K. Barnes.

[fol. 571] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 6, 1963

I

Notice is hereby given that General Motors Corporation, the above named Respondent and Cross Appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Washington entered in the above entitled case on January 7, 1963, reversing that portion of the judgment of the Superior Court of the State of Washington for Thurston County in No. 28036 with respect to the appeal initiated by the above named Appellants and affirming that portion with respect to the cross-appeal initiated by the above named Respondent and Cross-Appellant.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 (2).

II

The Clerk will please prepare a Transcript of the Record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1) The entire record filed in this Court on said appeal to the above entitled Court initiated by the above named Appellants and on the cross-appeal initiated by the above named Respondent and Cross-Appellant.

[fol. 572] (2) The opinion of this Court filed December 6, 1962.

(3) Judgment of the Supreme Court entered January 7, 1963.

(4) This Notice of Appeal to Supreme Court of the United States.

III

The following questions are presented by this appeal:

1. Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Commerce Clause of the United States Constitution when applied to the entire gross receipts from interstate sales of goods manufactured and sold wholly without the state by a foreign corporation to retail dealers located within the state, when that corporation's in-state activities with respect to said retail dealers consist only of checking on the performance by said retail dealers of their Dealer Selling Agreements with said foreign corporation and assisting said retail dealers, principally by advice, with respect to their conduct of their retail businesses?

2. Is a Washington tax measured by unapportioned gross receipts which is laid on both the privilege of manufacturing and the privilege of selling, but exempts from tax as manufacturers those who pay the tax as sellers, repugnant to the Commerce Clause of the United States Constitution when applied to an out of state manufacturer, because it assures only a single tax on a combination of local manufacture and local sale while exposing combinations of local manufacture and out of state sale and out of state manufacture and local sale to multiple burdens and double taxation, thus providing a direct commercial advantage to intrastate business?

[fol. 573] 3. Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution when applied to the entire gross receipts of a foreign corporation from sale of goods manufactured and sold wholly without the state by said foreign corporation to retail dealers located within the state when that corporation's in-state activities with respect to said retail dealers consist only of checking on the performance by said retail dealers of their Dealer Selling Agreements with said foreign corporation

and assisting said retail dealers, principally by advice, with respect to their conduct of their retail businesses?

DeWitt Williams, 1440 Washington Building, Seattle 1, Washington, Aloysius F. Power, Donald K. Barnes, Thomas J. Hughes, 3044 West Grand Boulevard, Detroit 2, Michigan,

Rosling, Williams, Lanza & Kastner, 1440 Washington Building, Seattle 1, Washington,

Attorneys for above named Respondent and Cross-Appellant.

[fol. 574] ACKNOWLEDGMENT OF SERVICE

On behalf of the above named Appellants in Case No. 36001 in the Supreme Court of the State of Washington, I hereby acknowledge receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, served by the above named Respondent and Cross Appellant this 6th day of March, 1963.

John J. O'Connell, Attorney General of the State of Washington, By Lloyd W. Peterson, Assistant Attorney General,

---

[fol. 575] CLERK'S CERTIFICATE

The undersigned Clerk of the above entitled Court hereby certifies that in Case No. 36001 in the Supreme Court of the State of Washington that the foregoing Notice of Appeal to the Supreme Court of the United States was filed with the undersigned Clerk of said Court this 6th day of March, 1963, and that said Court is possessed of the record in the above entitled case.

William M. Lowry, Clerk of the Supreme Court of Washington.

[fol. 576] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 577]

SUPREME COURT OF THE UNITED STATES

No. 1071—October Term, 19^2

GENERAL MOTORS CORPORATION, Appellant,

vs.

WASHINGTON ET AL.

ORDER NOTING PROBABLE JURISDICTION—June 17, 1963

Appeal from the Supreme Court of the State of Washington.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 3 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit 2, Michigan;
DEWITT WILLIAMS,
1440 Washington Building,
Seattle 1, Washington,
Attorneys for Appellant.

ROSLING, WILLIAMS, LANZA & KASTNER,
Seattle, Washington,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

INDEX

	Page
Jurisdictional Statement	1
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes and Constitutional Provisions	6
Statement of the Case	6
How the Federal Questions were Raised in Proceedings Below	10
The Questions are Substantial as a Matter of Constitutional Law	11
The Questions are Substantial as a Matter of Public Importance	19
Conclusion	20
Appendix A—Superior Court Opinion	1a
B—Supreme Court Opinion	3a
C—Supreme Court Judgment	23a
D—Statutes	25a
E—Constitutional Provisions	28a

CITATIONS

Cases:

Adams, J. D., Manufacturing Co. v. Storen, 304 U.S. 307 (1938)	14
American Manufacturing Company v. City of St. Louis, 250 U.S. 459 (1919)	14
Automatic Voting Machine Corp. v. Daley, 409 Ill. 438, 100 N.E. 2d 591 (1951)	18

Page

B. F. Goodrich Co. v. Washington State et al., 38 Wash. 2d 663, 231 P. 2d 325 (1951) 15, 21

Columbia Steel Co. v. Washington State, 30 Wash. 2d 658, 192 P. 2d 976 (1948) 15

Connecticut General Life Insurance Company v. Johnson, 303 U.S. 77 (1938) 17

Crown Zellerbach Corporation v. The State of Washington, 45 Wash. 2d 749, 278 P. 2d 305 (1954) 14

Dahnke-Walker Milling Company v. Bondurant, 257 U.S. 282 (1921) 3, 11

Field Enterprises, Inc. v. State of Washington, 47 Wash. 2d 852, 289 P. 2d 1010 (1955), 352 U.S. 806 (1956) 3, 11, 20

Freeman v. Hewit, 329 U.S. 249 (1946) 11

Gwin, White & Prince, Inc. v. Henneford, et al., 305 U.S. 434 (1939) 3, 11, 18, 19

Hans Rees' Sons, Incorporated v. North Carolina, 283 U.S. 123 (1931) 17, 22

Los Angeles, The City of, v. Belridge Oil Company, 48 Cal. 2d 320, 309 P. 2d 417 (1957) 17

McLeod v. J. E. Dilworth Co., 322 U.S. 327 (1944) 16

Memphis Steam Laundry Cleaner, Inc. v. Stone, 342 U.S. 389 (1952) 11, 14

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954) 14

Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954) 16

Nippert v. City of Richmond, 327 U.S. 416 (1946) 13, 14, 15

	Page
Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450 (1959)	3, 11, 14, 21
Norton Company v. Department of Revenue, 340 U.S. 534 (1951)	11, 16, 18, 21, 22
Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951)	11
Weyerhaeuser Sales Co. v. Tax Commission, et al., 30 Wash. 2d 947, 192 P. 2d 979 (1948)	15
Wisconsin et al. v. J. C. Penney Co., 311 U.S. 435 (1940)	17

Statutes:

Revised Code of Washington, Title 82:	
RCW 82.04.040	6
RCW 82.04.060	6
RCW 82.04.070	6
RCW 82.04.220	6
RCW 82.04.240	6, 13
RCW 82.04.270	6, 13
RCW 82.04.295	6
RCW 82.04.440	6, 13
RCW 82.04.500	6
RCW 82.32.180	2
62 Stat. 929; 28 U.S.C. §1257 (2)	3, 11
73 Stat. 555, 556; 15 U.S.C. §381-84 (P.L. 86-272)	22

United States Constitution:

Art. I, §8, cl. 3	6
Fourteenth Amendment	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.....

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

General Motors Corporation appeals from the final judgment of the Supreme Court of the State of Washington, entered on January 7, 1963, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that the questions presented are constitutionally substantial and of public importance.

The Appellees are the State of Washington and the Tax Commissioners of the State of Washington.

OPINIONS BELOW

The opinion of the Superior Court of the State of Washington for Thurston County, in which the case was tried, is not officially reported. A copy of its opinion is attached hereto as Appendix A. The opinion of the Supreme Court of the State of Washington is reported at 160 Wash. Dec. 867, ... Wash. 2d ..., 376 P. 2d 843, and a copy is attached hereto as Appendix B.

JURISDICTION

General Motors brought suit under Section 82.32.180 of the Revised Code of Washington in the Superior Court for the recovery of business and occupation tax (plus interest) paid to the State of Washington and assessed on the entire gross receipts from wholesale sales of motor vehicles and parts manufactured and sold wholly without the state by General Motors and shipped to Chevrolet, Pontiac and Oldsmobile dealers located in Washington, and for an injunction against similar assessments in the future. The Superior Court granted judgment, including the injunction, for General Motors with respect to the tax assessed on the gross receipts from certain sales and denied relief with respect to the balance. On appeal the State Supreme Court reversed the portion of the judgment in favor of General Motors and affirmed the portion adverse, sustaining the tax as originally assessed on all sales.

A Department of the Washington Supreme Court, the highest state court in which a decision could be had, heard oral argument on November 20, 1961, and the Court, on its own motion, ordered a rehearing *en banc* which was held

on October 15, 1962. The Court filed its *en banc* decision on December 6, 1962, entering final judgment on January 7, 1963, a copy of which is annexed as Appendix C.

Notice of appeal to this Court was filed in the State Supreme Court on March 6, 1963. The jurisdiction of the Supreme Court to hear this appeal is conferred by 62 Stat. 929, 28 U.S.C. §1257(2). The following cases sustain such jurisdiction: *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450; *Field Enterprises, Inc. v. State of Washington*, 352 U.S. 806; *Gwin, White & Prince, Inc. v. Henneford, et al.*, 305 U.S. 434; *Dahnke-Walker Milling Company v. Bondurant*, 257 U.S. 282.

QUESTIONS PRESENTED

(1) Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Commerce Clause of the United States Constitution when applied to the entire gross receipts from sales of goods manufactured and sold wholly without the state by a foreign corporation to retail dealers located within the state, when that corporation's in-state business activities with respect to such dealers consist only of checking on the performance by such dealers of their Dealer Selling Agreements with said foreign corporation and assisting such dealers, principally by advice, with respect to their conduct of their retail businesses?

Subsidiary to this question are the following:

(a) Is such a tax a prohibited exaction on the privilege of engaging in interstate commerce when there is no local office in any way related to the trans-

actions upon which the tax is based, there is no separable intrastate commerce, and the only in-state aspects are the locations of the customers (retail dealers), national advertising placed outside the state, and regular contacts with the customers at their places of business by traveling representatives, some of whom reside in the state (hereinafter referred to as transactions of the first class)?

(b) Does the Commerce Clause prohibit such an exposure of the interstate commerce to the risk of multiple burdens and as to some of the transactions to actual double taxation?

(c) Are the answers to (a) and (b) the same for other transactions which are in all respects similar except for the addition of an office in the state staffed by one man (and his secretary) whose duties are to give additional advice to dealers in all of Alaska and parts of Washington and Idaho and to assist them primarily by expediting shipments in periods of short supply (hereinafter referred to as transactions of the second class)?

(2) Is a Washington tax measured by unapportioned gross receipts which is laid on both the privilege of manufacturing and the privilege of selling, but exempts from tax as manufacturers those who pay the tax as sellers, repugnant to the Commerce Clause of the United States Constitution when applied to an out-of-state manufacturer, because it assures only a single tax on a combination of local manufacture and sale while exposing combinations of local manufacture and out-of-state sale and out-of-state manufacture and local sale to multiple burdens and double taxation, thus providing a direct commercial advantage to intrastate business?

(3) Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution when applied to the entire gross receipts of a foreign corporation from sale of goods manufactured and sold wholly without the state to retail dealers located within the state when that manufacturer's in-state activities with respect to such dealers consist only of checking on the performance by such dealers of their Dealer Selling Agreements with said foreign corporation and assisting such dealers, principally by advice, with respect to their conduct of their retail businesses?

Subsidiary to this question are the following:

(a) Is such a tax an unwarranted projection of state power beyond its borders and the taking of property without due process of law when it is measured by the unapportioned gross receipts from manufacture and sale conducted wholly without the state, with only those in-state aspects described in Question (1)(a) and, as to some transactions, in Question (1)(c)?

(b) Is such a tax so measured grossly disproportionate to the protection and benefits conferred by the state upon the business when the only in-state aspects to be protected and benefited are those described in Question (1)(a) and, as to some transactions, in Question (1)(c)?

STATUTES AND CONSTITUTIONAL PROVISIONS

The tax here involved is imposed by Title 82, Chapter 82.04, of the Revised Code of Washington. Pertinent portions of Sections 82.04.040, 82.04.060, 82.04.070, 82.04.220, 82.04.240, 82.04.270, 82.04.295, 82.04.440, and 82.04.500 are set forth in Appendix D hereto.

Art. I, §8, cl. 3 of the Constitution of the United States (Commerce Clause) and the Due Process Clause of the Fourteenth Amendment to that Constitution are set forth in Appendix E hereto.

STATEMENT OF THE CASE

This is an appeal by General Motors from the assessment by the State of Washington of tax, purportedly imposed for the privilege of "engaging within this state in the business of making sales at wholesale" measured by the unapportioned gross receipts from the transactions hereinafter described in bare outline for the limited purpose of this Statement.

Appellant, General Motors, is a Delaware corporation qualified to do business within the State of Washington. It owns and operates factories for the manufacture of automobiles, trucks, parts and accessories for sale at wholesale to authorized independent retail dealers, including a number of such dealers located in Washington. No manufacturing or assembly facilities are located in the State of Washington. Each of Appellant's dealers within the State is incorporated or otherwise organized wholly indepen-

dently of Appellant and has no relation to Appellant except as an independent purchaser of Appellant's products.

Appellant conducts much of its business through Divisions, not separately incorporated, which operate substantially independently of one another. Some of these Divisions maintain offices in Washington and pay without dispute the tax on the transactions passing through such offices. This Appeal involves the transactions of only Appellant's Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions and the taxability of gross receipts derived from their sales to Chevrolet, Pontiac and Oldsmobile retail dealers located within the state. All products involved in these transactions are manufactured, sold and delivered outside the state and shipped into the state pursuant to orders from the dealers.

The orders are received at and processed through zone offices and a parts warehouse in Portland, Oregon, completed by delivery and shipment of vehicles and parts from factories (sometimes warehouses) located outside Washington, including factories at Oakland and South Gate, California; St. Louis, Missouri; and Lansing and Pontiac, Michigan; and a parts warehouse at Portland, Oregon.

The field sales organizations of the Chevrolet, Pontiac and Oldsmobile Divisions are similar in most respects. Each Division maintains a zone office in Portland, Oregon. The geographical territory of each "Portland zone" includes Washington, Oregon, Alaska, and variously parts of Idaho, Montana and Wyoming. The zone manager appoints dealers in appropriate locations throughout his territory and executes with each a "Dealer Selling Agreement" which defines the obligations of the parties and the terms on which the dealer may purchase vehicles and parts. Thereafter, the zone manager and his assistants

advise the dealer in the management of his dealership and check his compliance with the Dealer Selling Agreement, particularly through the efforts of a "district manager". Some of the district managers live in the state, but they have no offices other than the zone offices in Oregon. No other zone personnel even live in the state.

Orders are sent by the dealer to the zone office in Portland. The orders are accepted (or rejected) at the zone office or at the factory, and if accepted are filled by shipment from the factory by common carrier, f.o.b. the factory. Payment is received at the factory. By reason of the nature of Appellant's business, solicitation of orders is not a necessary or usual step in its sales procedures.

General Motors Parts Division warehouses and sells and ships to dealers parts and accessories for Chevrolet, Pontiac, and Oldsmobile vehicles. It has warehouses at Portland, Oregon and Seattle, Washington, which stock different classes of items. Items carried by the Portland warehouse are ordered by the dealers directly from Portland, without any participation by the Seattle warehouse. The Division has no field personnel visiting dealers. Appellant has voluntarily paid and does not dispute the tax on the transactions of the Seattle warehouse. Tax on gross receipts from sales from the Portland warehouse, not the Seattle warehouse, is contested here.

The Washington courts divided Appellant's transactions into two classes. The first class included all Oldsmobile, Pontiac and General Motors Parts Divisions transactions, and part of the Chevrolet Division transactions, denominated Chevrolet Class "B". The trial court, reversed by the supreme court, held the first class of transactions constitutionally immune from taxation. The second class of transactions, denominated Chevrolet Class "A", was held by the trial court, affirmed by the supreme court, to be taxable.

The description above is applicable to both classes of transactions. No office of Appellant's in the state had any contact of any kind with the transactions in the first class and every step therein on Appellant's part, from receipt and acceptance of an order to delivery of product and receipt of payment was performed at an office, warehouse or factory outside the state. The respective transactions of the Chevrolet, Oldsmobile and Pontiac Divisions are in no way related to one another, and the transactions of the Portland warehouse of the Parts Division are in no way related to its Seattle warehouse.

The second class of transactions, Chevrolet Class "A", consisted of sales through the Chevrolet Portland office to dealers in Washington other than in the nine southern counties of the state. The sole factual difference between this class and the other is that here Chevrolet maintained a so-called "branch office" in Seattle, consisting of one man and his secretary. Its or his function was to assist Chevrolet dealers in Alaska, part of Idaho and all of Washington except the nine southern counties, to give better service on orders and in particular to get faster delivery. This office did not solicit, receive, process, accept or see orders; it did not make franchise or credit approvals; it did not receive payments, make deliveries or keep books. The branch manager had no jurisdiction over and did not establish contact with any other Chevrolet personnel in Washington, and no other personnel reported to, used or worked from this office.

HOW THE FEDERAL QUESTIONS WERE RAISED IN PROCEEDINGS BELOW

The federal questions sought to be reviewed were raised in the Superior Court by the notice of appeal and complaint, prayer for injunction, stipulation, that Court's memorandum opinion, Appellant's proposed findings of fact and conclusions of law and the findings of fact and conclusions of law entered by the Superior Court and were fully argued and briefed before that Court. That Court held that all sales of the first class were in interstate commerce and outside the territorial jurisdiction of the state and that the application of the statute to such sales would be repugnant to the Commerce Clause of, and the Due Process Clause of the Fourteenth Amendment to, the United States Constitution. It held, however, that the presence of the Seattle office and its "direct connection" with sales through the expediting of deliveries removed the constitutional immunity of the second class of sales.

The Superior Court entered judgment accordingly. The State appealed and Appellant cross-appealed to the Washington Supreme Court the respectively adverse portions of this judgment. On appeal the State Supreme Court sustained the tax as originally assessed on all transactions over General Motors' claim that as so applied the statute was invalid because repugnant to the United States Constitution on both interstate commerce and due process grounds.

The federal questions were raised in the State Supreme Court by assignments of error in the briefs filed by General Motors and the State and were fully argued and briefed. The *en banc* opinion (App. B) of that Court shows that the federal questions were raised and decided as necessary grounds for its judgment and that the validity of the tax statute as applied was drawn in question and sustained against a claim of repugnancy to the United States Con-

stitution. The circumstances of this case are within the prerequisites for appeal jurisdiction as defined in *Dahnke-Walker Milling Company v. Bondurant*, 257 U.S. 282. *Field Enterprises, Inc. v. State of Washington*, 352 U.S. 806, and *Gwin, White & Prince, Inc. v. Henneford, et al.*, 305 U.S. 434, were appeals from the same State Court involving the same tax. This Court, accordingly, has jurisdiction on appeal pursuant to 62 Stat. 929; 28 U.S.C. §1257(2).

THE QUESTIONS ARE SUBSTANTIAL AS A MATTER OF CONSTITUTIONAL LAW

First Question

In terms of this problem, there are three types of commerce: *intra*state, *inter*state and *extra*state. There is no doubt that a state may tax, by unapportioned gross receipts, the privilege of engaging in a separable intrastate business, such as the activities of the General Motors Parts Division Seattle warehouse in this case. However, it is settled that the Commerce Clause absolutely prohibits a tax, however measured, upon the privilege of engaging in purely interstate commerce, and it is immaterial that that commerce may be furthered by even substantial in-state activities. *Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc.* 358 U.S. 450, 458; *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389; *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602; *Norton Company v. Department of Revenue*, 340 U.S. 534; *Freeman v. Hewit*, 329 U.S. 249; *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434. *A fortiori*, there cannot be a state tax for the privilege of engaging in extrastate commerce.

The Washington Supreme Court does not in terms find any intrastate commerce nor any realistically separable

local business. It sustains the tax upon a lengthy description, unsegregated, of not only General Motors' in-state activities but its out-state activities as well and also activities of its retail dealers, creating the impression of extensive taxable business activity. It is not, however, the number of words taken to describe business activity that gives rise to tax liability. The controlling consideration is the *character of General Motors'* in-state activities. These activities are nothing more than promotional and service efforts by traveling representatives in furtherance of the out-state manufacture, sale and delivery of General Motors' products for shipment across state lines to Washington dealers. The commerce culminating in the taxed transactions is predominantly extrastate except for such shipments and visits to the in-state dealers, which gives that commerce an interstate character. There is no intrastate commerce.

Under these circumstances, the effect of the decision of the Washington Supreme Court is to sustain an unapportioned gross receipts tax imposed directly and solely on the privilege of engaging in interstate commerce or upon extrastate commerce having minimal in-state aspects. The tax is not even claimed to be imposed on any activity of General Motors "realistically separable" from interstate commerce and measured by related interstate sales. This is clear from the opinion below which after a lengthy recital of the facts states (App. B, pp. 13a-14a):

> "General Motors accomplishes wholesale sales of its products to retail dealers within the state. Part of the activities involved in these wholesale sales take place elsewhere; *e.g.*, orders are filled, delivery made, and payment is received outside of the state. Nonetheless, business activities having a relation to wholesale sales are conducted in Washington.

> These activities provide an incident upon which the taxing statute operates."

The conflict with *Nippert v. City of Richmond*, 327 U.S. 416, 423, is clear.

The "incidents" found taxable here are far less substantial than other elements of the sale itself (without reaching back to the underlying manufacturing) which occur elsewhere, as the execution of "Dealer Selling Agreements" and the receipt and processing of orders at the zone offices in Oregon, and the acceptance of orders, receipt of payment and delivery at the factories in California and elsewhere. If the minimal sales elements in Washington are taxable, so are the larger elements in Oregon and again in California. This is the very type of fragmentation of an interstate transaction with exposure to multiple *unapportioned* exactions which the Commerce Clause was designed to prevent.

Second Question

In separate subsections, the statute levies taxes at the same rate on the privilege of manufacturing, RCW 82.04.240, and the privilege of selling at wholesale, RCW 82.04.270. It then exempts from the tax upon manufacturing any person who is taxable as a seller as to the same transactions, RCW 82.04.440. The statute thus insures that any Washington manufacturer who sells to a Washington customer shall pay only one tax; and it seeks to lay the same tax burden upon a Washington manufacturer who makes a sale to an out-state customer and upon an out-state manufacturer who sells to an in-state customer.

The statute presents an appearance of fairness—everyone seems to pay only one tax. The fact is, however, that

everyone pays only one tax *to Washington.* An out-state manufacturer who pays to his state a tax on the privilege of manufacturing is then met by a demand from Washington for a tax upon the privilege of making sales to customers in Washington. This case involves actual double taxation, not borne by a local competing manufacturer, for as to those vehicles manufactured in St. Louis, Missouri and sold to Washington customers, St. Louis levies a tax on the privilege of manufacturing which is indistinguishable from Washington's tax on manufacturing. Both manufacturing taxes have been held valid: *American Manufacturing Company v. City of St. Louis,* 250 U.S. 459 and *Crown Zellerbach Corporation v. Washington,* 45 Wash. 2d 749, 278 P. 2d 305.

This Court has often invalidated local gross receipts taxes upon a showing of risk that the state of the buyer and the state of the seller might, through different taxing techniques, impose upon interstate commerce multiple tax burdens not borne by intrastate commerce. *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 458, reaffirmed the unvarying constitutional principle that a state may not discriminate against interstate commerce:

> "Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, *Memphis Steam Laundry v. Stone,* 342 U. S. 389 (1952); *Nippert v. Richmond,* 327 U.S. 416 (1946), or by subjecting interstate commerce to the burden of 'multiple taxation,' *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U.S. 157 (1954); *Adams Mfg. Co. v. Storen,* 304 U.S. 307 (1938)."

Here we have more than a possible, fortuitous multiplication of burdens. We have actual double taxation through a taxing scheme carefully calculated to discriminate against

interstate commerce by providing a direct commercial advantage to local business. Such discrimination is forbidden.

In *Columbia Steel Co. v. Washington*, 30 Wash. 2d 658, 192 P. 2d 976 and *Weyerhaeuser Sales Co. v. Tax Commission, et al.*, 30 Wash. 2d 947, 192 P. 2d 979, the Supreme Court of Washington itself held that an earlier version of this statute was invalid on Commerce Clause grounds because it exempted from the *wholesalers'* tax those persons who have paid the tax as *manufacturers*. We disagree with that Court's holding in *B. F. Goodrich Co. v. Washington*, 38 Wash. 2d 663, 231 P. 2d 325, and in this case, that the Legislature has cured the infirmity by merely reversing the words so as to exempt from the *manufacturers'* tax those persons who have paid the tax as *wholesalers*. "Not the tax in a vacuum of words, but its practical consequences for the doing of interstate commerce in applications to concrete facts are our concern." *Nippert v. Richmond*, 327 U.S. 416, 431.

Third Question

The decision below sustains a privilege tax measured by the entire gross receipts of an out-state manufacturer from wholesale sales of goods manufactured and sold out-state but shipped to retail dealers within the state when that manufacturer's in-state business activities related to such dealers consist only of promotional and service efforts by traveling representatives in furtherance of the out-state manufacture, sale and delivery. From the time of receipt and acceptance of an order to consummation by delivery of product and receipt of payment, every step on General Motors' part in each of the classes of transactions in dispute is performed at an office, warehouse or factory outside the state.

The opinion of the Washington Supreme Court lays aside these facts by saying (App. B, p. 17a):

> "Although the mechanical aspects of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transaction occurs in Washington *where the customer is located* and where the demand for the manufactured product exists, in very large degree, as a result of General Motors promotional activities." (Emphasis added.)

The substance of the holding of the Supreme Court of Washington is that an unapportioned tax measured by gross receipts may be exacted for the privilege of having customers in the state, provided only that there are within the state—first, the customer; second, some minimal presence by the taxpayer within the state, including national advertising developed and placed without the state. This is wholly new law, directly conflicting with many holdings of this Court, *Miller Brothers Co. v. Maryland*, 347 U.S. 340; *Norton Company v. Department of Revenue*, 340 U.S. 534; *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327.

If this is to be the law, it should be declared by no less authority than the Supreme Court of the United States. No other state or local taxing jurisdiction has thus far sought to impose taxes upon such a thin basis and on a measure so unrelated to benefits conferred. But if this decision is allowed to stand, we may expect not only a reinterpretation of existing gross receipts tax structures, as in Illinois, Indiana, West Virginia, Los Angeles, New York City, and others, but a flood of new statutes in many states and municipalities throughout the country seeking to take advantage of this windfall of paying for service to the local citizenry by exacting a toll from those who sell to

them, even though such business is done entirely elsewhere and elsewhere amply taxed.

All that has been done here within the jurisdiction is (1) to beam in national advertising placed without the jurisdiction; (2) to watch and advise the retail dealers (customers) in the conduct of their businesses; and (3) to have customers within the jurisdiction. It is this last point on which the Court below founders. It equates the having of customers with an obligation to the state. An obligation for what? The protection and benefits for which the state is entitled to be reimbursed all go to the customers (who pay for them in their own taxes). No protection or benefits are given to General Motors merely by reason of the fact that retail dealers, or in turn their retail customers, resident in the jurisdiction provide a "market" for its products.

It is a violation of due process for a state to tax transactions beyond its borders, or to impose a tax the measure of which does not bear a reasonable fiscal relationship to the protection and benefits conferred by the state on the interstate activities which give rise to the tax. *Hans Rees' Sons, Inc. v. North Carolina,* 283 U.S. 123; *Connecticut General Life Insurance Company v. Johnson,* 303 U.S. 77; *Wisconsin v. J. C. Penney Co.,* 311 U.S. 435.[1]

---

[1] Other courts have recognized that due process and equal protection considerations prevent the imposition of unapportioned gross receipts taxes upon activities which are conducted only in part within the taxing jurisdiction. The decision of the Supreme Court of California in *City of Los Angeles v. Helridge Oil Company,* 48 Cal. 2d 320, 309 P. 2d 417, is directly in conflict with the decision of the Washington Supreme Court in this case, and is particularly interesting in that the business there involved was confined entirely to California with no interstate aspects. It holds that, as a matter of due process and equal protection, Los An-

(Continued on next page)

This Court has never held that an unapportioned gross receipts tax could be imposed for the privilege of doing business in a jurisdiction where there was no office participating in the business, and has frequently held to the contrary. *Norton Company v. Department of Revenue*, 340 U.S. 534. No such new principle should be engrafted upon what the bar understands to be one of the guidelines of tax law except by this Court. Until now, a local office, sufficiently substantial to be a "separable local business", has been the *sine qua non* for this type of tax.

The Washington Supreme Court has erred, not only in finding a "taxable incident", but in holding that, there being such an incident, the measure of the tax based upon that incident is constitutionally immaterial. This Court has held to the contrary, notably in *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, involving this very tax. In that case it said, at page 438:

> "While appellant is engaged in business within the state, and the state courts have sustained the tax as laid on its activities there, the interstate commerce service which it renders and for which the taxed compensation is paid is not wholly performed within the state. A substantial part of it is outside the state where sales are negotitated and written contracts of sale are executed, and where deliveries

---

(Continued from preceding page)

geles may impose its gross receipts tax upon only that portion of receipts arising from selling activities carried on within and without the city as are fairly attributable to the portion of such activities carried on within the city. The Supreme Court of Illinois, which had been reversed in part by this Court in *Norton Company v. Department of Revenue*, 340 U.S. 534, later held in *Automatic Voting Machine Corp. v. Daley*, 409 Ill. 438, 100 N.E.2d 591, that extensive sales promotion activities, the delivery of bids, the passage of title to the goods sold, and the installation and servicing of the machines and the giving of instruction in their operation, all by non-resident employes temporarily in the state, did not constitute the business of making sales in the state.

> and collections are made. Both the compensation and the tax laid upon it are measured by the amount of the commerce—the number of boxes of fruit transported from Washington to purchasers elsewhere; *so that the tax, though nominally imposed upon appellant's activities in Washington, by the very method of its measurement reaches the entire interstate commerce service rendered both within and without the state and burdens the commerce in direct proportion to its volume.*" (Emphasis added.)

Although couched in interstate commerce terms, *Gwin, White & Prince* is eloquent in its denunciation of an improper measure in reasoning which is equally appropriate to due process.

THE QUESTIONS ARE SUBSTANTIAL AS A MATTER OF PUBLIC IMPORTANCE

The economic importance of this decision is huge, although only some $320,000 is directly at stake. The contested assessments cover only some of General Motors' Divisions and only relatively brief periods ending in 1953. The accumulated liability for all Divisions for the ten years since that time runs to many hundreds of thousands of dollars. The Attorney General of Washington in a press release estimated that a decision in favor of General Motors would prevent the state from collecting an additional $1,500,000 a year. Having in mind that the decision affects every business which does not have a participating office in the state but which ships to customers located within the state and which has any presence therein, however slight, we consider that estimate low. The indeterminate future is of course even more importantly involved than the past.

Were the novel principle of this decision to be adopted in other jurisdictions, either by interpretation of existing statutes in some states and municipalities, or by new legislation to take advantage of this new way to make outsiders pay for insiders' benefits, other liabilities of inestimable amounts would arise—some of them for past periods long since considered closed and fixed. There will be windfalls to many jurisdictions, as in Washington, never contemplated in the legislation or budgetary planning.

This tax law had been in effect, and General Motors had been paying the tax, for some twenty years before these assessments were made. Throughout that long period no attempt was made to apply the tax to the types of transactions here involved. It was assumed that there was no sufficient nexus to support the tax, that there was no separable local business, and that there were no sufficient protection and benefits conferred to justify an unapportioned gross receipts exaction to pay for them. The state is here seeking not to defend revenue planned by the Legislature but to extend the tax collector's reach into hitherto unexplored territory.

CONCLUSION

The questions presented have not been settled by this Court's *per curiam* affirmance, 352 U.S. 806, of the decision of the Washington Supreme Court in *Field Enterprises, Inc. v. State of Washington*, 47 Wash. 2d 852, 289 P. 2d 1010, that the taxpayer there was properly assessed with this tax. Field Enterprises operated an office in Washington, to which was attached a large corps of salesmen who

solicited and took orders, received down payments, and, together with other personnel of the office, performed other services in Washington. General Motors has somewhat similar arrangements in Washington, although the number of its personnel and its local activities are only a small fraction of what Field Enterprises' were in relation to the measure of tax, and voluntarily has always paid the tax thereon. *Those arrangements and activities have no relation whatever to the activities, transactions and tax involved in this Appeal.*

The transactions involved in this Appeal can be likened only to those held not taxable by this Court in *Norton Company v. Department of Revenue*, 340 U.S. 534, and, with obvious reluctance, by the Supreme Court of Washington in *B. F. Goodrich Co. v. Washington*, 38 Wash. 2d 663, 231 P. 2d 325. In this case, as in the non-taxable *Norton* and *Goodrich* transactions, there is no local office and no separable local business. As this Court has said, a gross receipts tax on the privilege of doing business "by its very nature makes interstate commerce bear more than its fair share". *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 462.

The decision below is not a refinement or logical extension of existing constitutional law. It is a wholly new approach to the protection which the Constitution affords to the national market. It does not tax business activities; it taxes the presence of customers. Such a radical departure from established constitutional principle is of public importance, and we submit should be given plenary consideration by this Court.

This tax, by its very method of measurement, reaches the entire interstate commerce and extrastate business of

manufacturing and selling. Aside from improperly taxing out-state sales, the statute as applied levies a tax not properly apportioned to business done in the state and for this further reason violates due process, *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123.

Under P. L. 86-272 (73 Stat. 555, 15 U.S.C. §381-4) enacted by Congress in 1959, no state may impose a tax on or measured by *apportioned net income* on account of such activities as those of General Motors in this case, absent a local office, etc. *A fortiori*, the principle and policy of that Act frown upon a tax measured by unapportioned gross receipts.

Not only is the decision below clearly erroneous, it has a serious and far reaching effect on the day-to-day operations of multistate businesses. The business community has generally understood since *Norton Company v. Department of Revenue*, 340 U.S. 534, that an interstate seller had to have some local office or store conducting an intrastate business before it could constitutionally become subject to this type of transaction or gross receipts tax. Business and commercial arrangements have been and are entered into on that understanding.

The decision, therefore, has unsettled these relationships and introduced an element of uncertainty into the national market. Interstate commerce transactions, it holds, may be fragmentized and subjected to a privilege tax measured by unapportioned gross receipts in each state through which that commerce moves.

It is submitted that the decision of the Washington Supreme Court extends the taxing power of the State beyond the limitations imposed by the United States Constitution to the detriment of the national market. We believe that

the questions presented by this Appeal are constitutionally substantial, that the State Court's answers are contrary to all precedent and completely novel, and that they are of great public importance and should be decided by this Court after oral argument and briefing on the merits.

Respectfully submitted,

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit 2, Michigan;

DEWITT WILLIAMS,
1440 Washington Building,
Seattle 1, Washington,
Attorneys for Appellant.

ROSLING, WILLIAMS, LANZA & KASTNER,
Seattle 1, Washington,
Of Counsel.

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THURSTON COUNTY

GENERAL MOTORS CORPORATION, a corporation,
Plaintiff,
v.
THE STATE OF WASHINGTON, ET AL.,
Defendants.
No. 28036.

MEMORANDUM OPINION

The major question is the taxability of automobiles and other merchandise sold in response to orders placed with offices outside of the state and shipped to the buyer from outside of the state. On the authority of *B. F. Goodrich v. State*, 38 Wn. (2d) 663, and *Norton v. Department of Revenue*, 340 U. S. 534, the sales in question are not taxable *except* that those sales made by the Chevrolet Division within the area served by the Seattle branch Zone office and while said office was open are taxable. The Seattle branch was maintained to assist purchasers (dealers) within the area served by the office to get better service on orders and in particular to get faster delivery. Such a service has a direct connection with the making of sales.

The so-called "Dealer Bonus" is in fact a deduction from the total purchase price. The dealer had an absolute right to the specified sum by his contract. It appeared that while

automobiles were sold only for cash that certain parts and accessories were sold to dealers on credit and that at least one purpose of the "bonus" arrangement was to create a fund for the protection of plaintiff on those credit sales. It is a well established principle that the true nature of a transaction controls and not the name a thing is called. The amount of the "bonus" is not a part of the sales price and is not taxable.

The parts return question has three parts, the return of defective parts is clearly not taxable, the return within thirty (30) days is not taxable, the only problem is with the return of parts in one annual shipment. This annual return of parts is in fact a repurchase by plaintiff and such is not to be deducted from the taxable amount.

Judgment may be presented accordingly.

Dated this the 1st day of December, 1960 A. D.

s/ Charles S. Wright, Judge.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GENERAL MOTORS CORPORATION, a corporation,
Respondent-Cross Appellant,
v.
THE STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington,
Appellants.

No. 36001
En Banc.

(Filed December 6, 1962)

This action was commenced by respondent cross-appellant, General Motors Corporation, for a refund of certain business and occupation taxes imposed by the State Tax Commission and for injunctive protection against similar assessments in the future.

The taxes involved were measured by gross receipts to General Motors from wholesale sales of automobiles, trucks, parts and accessories to independent retail dealers in the state. Assessments were made pursuant to RCW 82.04. General Motors duly protested the assessments, and hearings were held by the Tax Commission. The hearings resulted in Tax Commission orders concluding that General Motors had conducted business activities within the State

of Washington during the audit periods in question, which are from January 1, 1949, through June 30, 1953, which were sufficiently related to the sales in question to meet the requirements of the due process clause of the federal and state constitutions and the commerce clause of the federal constitution. Accordingly, the tax was imposed. Thereupon, General Motors sought relief in the Superior Court for Thurston County. The Superior Court granted portions of General Motors' prayer for relief and denied the balance. Both parties have appealed.

The amounts of gross receipts from the transactions which are included in the assessment base are not in question. There is no question either as to the rate of the tax, which, during the audit periods herein involved, was three-tenths of one percent (.003%), measured by the taxpayer's gross receipts from its taxable activities (wholesaling). The computation of the tax assessment and the interest involved have been settled by stipulation of the parties. The basic question presented to this court is whether General Motors is liable for the tax assessed.

General Motors is a Delaware Corporation, qualified to do business in Washington. The corporation conducts much of its business through divisions which operate substantially independently of each other. The transactions of only Chevrolet, Pontiac, Oldsmobile, and General Motors Parts Divisions are included in the tax base involved in this action, although other General Motors divisions and subsidiaries are engaged in business within this state.

General Motors owns and operates factories for the manufacture of automobiles, trucks and other merchandise. Sales of these products are made by General Motors to retail dealers in this state pursuant to orders initiated by the dealers. All of the products herein concerned are

manufactured outside of the state and shipped into the state. Activities conducted primarily outside the state include the design, engineering, fabrication, assembly and delivery of products; the procurement of materials, components and supplies; the general, executive, operating, financial and sales management; the receipt, processing, recording, approving, accepting and filling of orders; the billing and receipt of payment, the investigation, approval and execution of customer contracts (dealer franchises); the investigation and extension of credit; the composition and placement of advertising; and others.

During the audit periods here in question, the trial court found that General Motors was engaged in business actiity within the state. This activity involved the sale of automobiles, trucks, parts and accessories to retail dealers, and, also, included the establishment and maintenance of effective dealer representation, partially accomplished by arranging various sales and incentive contests and programs offered and conducted, separately or jointly, with the dealer and other components of the General Motors organization; national and local advertising programs conducted by General Motors through various media; joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; and on the job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of General Motors' products.

In order to provide for the distribution and sale of the manufactured products of Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions, General Motors maintains organizations of employees serving each of its major

subdivisions on a national, regional, zone and district level. This case is concerned with General Motors' business activities conducted within the State of Washington by its sales and promotion organizations—specifically, the divisions mentioned above during the audit periods here in question.

At all times during the audit periods, the State of Washington was included within the western region of General Motors' national organization covering eleven western states. Regions are divided up into geographical zones. At all times relevant herein, Washington was part of the Portland zone, which also included the States of Oregon and Idaho, the area that has now become the State of Alaska, and portions of Montana and Wyoming.

Each zone, including the Portland zone, is composed of geographical districts for the Chevrolet, Oldsmobile and Pontiac divisions. Within each district in the State of Washington are located the various retail dealers of General Motors' manufactured products, to whom wholesale sales of the manufactured products are made by General Motors.

The Portland zone organization for each of General Motors' Chevrolet, Pontiac and Oldsmobile divisions includes a staff of field representatives. Each zone organization is similar in all material respects, except that Pontiac and Oldsmobile have a lesser number of dealers than Chevrolet, and a correspondingly lesser number of districts. The operation of the General Motors Parts Division and certain differences between the Chevrolet organization and the others will be described later. Generally, a zone office is comprised of a zone manager and an assistant zone manager, a business management manager, a parts and service manager, an office manager—car distributor, a number of clerical assistants, and service representatives

and managers for each of the zones' districts. We are most concerned with the activities of the district managers, and the functions of other personnel need not be described in detail.

General Motors' field organizations devote the bulk of their efforts to the assistance of General Motors' retail dealers with the view of obtaining maximum conformance to the specifications and conditions required of the dealers pursuant to the "Dealer Selling Agreement," the terms of which will be described later.

General Motors achieves its wholesale sales of the automobiles, trucks, parts and accessories by the development and maintenance of a strong retail dealer representation; and General Motors' zone employees, including district managers, are charged with the responsibility of developing, maintaining, and promoting retail dealer representation, along with the general duties of promoting, developing, and maintaining good will and public esteem for General Motors' products. The trial court found that the activities of the field organization have a direct effect upon the sales and operations of the independent retail dealers.

The district manager's function includes serving as the zone manager's direct contact with the dealer at his place of business, receiving from him his complaints, observing his operations, reporting thereon to the zone office, and passing on to him such advice and counsel as the zone office can make available to strengthen his operation and make it more profitable, including passing on any knowledge gained of competitive products. District managers' contact and relationship with retail dealers is direct, almost entirely inside the State of Washington, and generally at the dealer's place of business. The frequency of contacts depends upon the size of the dealership and the nature and

extent of the problems confronting the dealer and General Motors. The district manager usually resides within his assigned territory. With the exception of certain activities in relation to the Chevrolet Division, district managers have no Washington offices; however, they frequently use their place of residence for business phone calls and receipt of business mail. District managers do not accept or approve credit, receive payment, or make delivery.

The relationship between General Motors and each of its Chevrolet, Pontiac, and Oldsmobile retail dealers is defined by a written contract called a "Dealer Selling Agreement," which is in all material respects uniform for all dealers in the state. The dealer operates a retail store for the sale of automobiles, and sometimes also trucks, supported by the sale of parts and accessories, a repair and servicing operation according to customers' needs, and the marketing of used cars taken in trade. Dealers are individual proprietorships, partnerships, or corporations, having no corporate relationship to General Motors, except that in some instances another division, Motors Holding Division, lends, temporarily, portions of the substantial capital required to initiate or maintain a dealership. The trial court found that the relationship between retailers and General Motors is that of independent purchaser and seller, and it cannot be said that General Motors had a "dealer organization" within its hierarchy.

The dealer's facilities are his own. He provides the tools, supplies, signs, and an inventory of parts and accessories. New and used automobiles are also owned by the dealer, subject, in the case of new automobiles, to financing arrangements with banks or finance companies, which frequently include General Motors Acceptance Corporation, a wholly owned corporate subsidiary of General Motors. The "Dealer Selling Agreement" provides certain restrictions

on the dealers' use of their own facilities and equipment. A dealer is expected to maintain a place of business, a sales room, and a service department satisfactory to General Motors. The dealer may not establish or move a branch sales office or service organization without written consent of General Motors. Every dealer is required to, and does, submit his books, records, and accounts to General Motors, and to maintain a satisfactory uniform accounting system designated by General Motors. Every dealer is required to meet minimum capital requirements as specified and determined by General Motors. Every dealer is required to, and does, maintain and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally and locally by General Motors. Every dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. Dealers uniformly agree to buy such special tools as are developed by General Motors for the servicing of their products.

To each dealer is assigned a "zone of influence," within which he enjoys the distinction of being the only retail outlet of the specific product for which he is dealer. He is also considered responsible for development of General Motors' share of the retail market within his designated area.

The dealer submits quarterly "projections" of his requirements for automobiles, parts and accessories, to his district manager. Thereafter, an order is sent to General Motors' zone office, usually by mail, sometimes by telephone, and infrequently by the district manager, who then mails or delivers the order to the zone office. Orders are accepted or rejected at the zone office or at the factory;

and, if accepted, they are filled by shipment from the factory by common carrier, f.o.b. the factory. If a dealer's orders are less than his "projections," the district manager, occasionally in conjunction with the zone manager, "counsels and advises" the dealer to determine the cause and to assist the dealer in taking corrective action.

The Parts Division of General Motors has the function of warehousing and shipping parts and accessories for Chevrolet cars and trucks and for Pontiac and Oldsmobile automobiles. Sales are made by this division to retail dealers on order. The division has a warehouse at Portland, Oregon; and during most of the period herein involved it also had a warehouse at Seattle. The warehouse at Seattle carried the "heavy volume" items. Less frequently, called-for items were ordered from the warehouse in Portland. Each dealer was furnished with two order forms. On one, he ordered from the Seattle warehouse items stocked there. On the other, he ordered directly from Portland items not carried in Seattle. Business and occupation tax was paid to the state on all shipments from the Seattle warehouse, and these taxes are not contested. Only the taxes measured by the gross proceeds of sales by the Portland warehouse to retail dealers in Washington are in dispute. The trial court found that the transactions of the Portland warehouse of the General Motors Parts Division were in no way related to the transactions of the Seattle warehouse of that division.

All of General Motors' retail dealers for Chevrolet, Pontiac, and Oldsmobile obtained their supply of parts and accessories for resale and servicing of new and used automobiles during the audit period in question from the General Motors Parts Division.

Chevrolet Division's operations with respect to the Counties of Asotin, Clark, Columbia, Cowlitz, Garfield, Klickitat, Skamania, Wahkiakum, and Walla Walla are identical to those of the other divisions generally described above. Sales to retail dealers in these counties have been described by the parties as Chevrolet Class "B" transactions, and we will refer to them by that designation. The operations and sales to retail dealers with respect to the balance of the state, which hereinafter will be referred to as Chevrolet Class "A" transactions, are substantially similar, except that during the relevant periods involved Chevrolet Division maintained a branch office in Seatle. This office was supervised by the Portland zone manager for a time, and later a Seattle zone office was established. General Motors has paid the tax since the establishment of the new zone office, and that tax is not contested. While the Seattle Branch office was under the direction of the Portland office, it performed the function of expediting deliveries and performing limited promotional work. The trial court concluded that the presence of the Seattle office and the service that it performed had a direct connection with Chevrolet Class "A" sales by the Portland zone office; that such sales were within the territorial jurisdiction of the state; and that the tax measured by these transactions was not violative of the due process clause or the commerce clause. Accordingly, the Chevrolet Class "A" transactions were held taxable. This conclusion is a subject of the cross-appeal by General Motors.

In accordance with a contractual arrangement, retail dealers make annual returns of obsolete parts to General Motors and are allowed credits therefor. The trial court concluded that these parts returns were in fact repurchases by General Motors, and that the amounts attributable to these transactions are properly includable in the gross pro-

ceeds of sales of products by General Motors to Chevrolet Class "A" retail dealers. This conclusion is also a subject of the cross-appeal by General Motors.

With respect to all other transactions included within the tax base, the trial court adjudged that General Motors was entitled to recover judgment of refund to the extent of $88,479.44, with interest. General Motors was also granted an injunction against the State of Washington, the Tax Commission, and its members, preventing assessment or collection of any business and occupation tax in connection with transactions past and future, not materially different from the transactions involved in this action.

We will proceed by first analyzing the problems involved with respect to those transactions that are the subject of the Tax Commission's appeal. Some of our discussion will relate incidentally to that portion of the cross-appeal dealing with Chevrolet Class "A" transactions.

We note preliminarily that, in our opinion, like the tail that follows the dog, the tax measured by the gross proceeds of sales by the Portland warehouse of the General Motors Parts Division must stand or fall with the taxes measured by the gross proceeds of the other transactions. Although the General Motors Parts Division does not have a field organization similar to that of the other divisions, the sales of parts and accessories is inseparable from that activity which relates to the development and maintenance of dealer representation and stimulates demand for the automobiles and trucks that parts and accessories accompany. Furthermore, the parties have not segregated their arguments with respect to the activities of the different divisions, so it is safe to assume that the activities of the field organizations of Chevrolet, Pontiac, and Oldsmobile are properly attributable to the corresponding sales by

Chevrolet, Pontiac and Oldsmobile retail dealers of parts and accessories wholesaled by General Motors Parts Division.

The first question presented in this case is whether there is a statutory basis for imposing a tax on General Motors for the activities conducted by it within the state during the relevant period involved.

The trial court found that General Motors was engaged in business in the State of Washington at all times during the audit periods here in question. It also found that General Motors' activities, through its employees, had a direct effect upon the sales and operations of the independent retail dealers. The business and occupations tax statute, RCW 82.04.220, imposes a tax on the privilege of engaging in business activities. General Motors accomplishes wholesale sales of its products to retail dealers within the state. Part of the activities involved in these wholesale sales take place elsewhere; *e. g.*, orders are filled, delivery made, and payment is received outside of the state. Nonetheless, business activities having a relation to wholesale sales are conducted in Washington.[1] These activities provide an inci-

[1] The trial court did not specifically find that the business activities conducted by General Motors were related to the wholesale sales consummated by General Motors to retail dealers, but such a finding is unnecessary in view of other specific findings mentioned above. Since the activities of General Motors had a direct effect on the sales of retail dealers, those activities necessarily had a direct effect on wholesale sales to retail dealers. The extensive field organization work undertaken by General Motors to assist retail dealers in maintaining a desired sales volume is performed because greater retail sales by retail dealers also means geater wholesale sales by General Motors to retail dealers. Significantly, the trial court refused to find that the activities of General Motors were unrelated to wholesale sales of General Motors to retail dealers.

dent upon which the taxing statute operates.[2] Whether or not these activities are sufficiently related to the accomplishment of wholesale sales to base the tax on the gross receipts of all wholesale sales to Washington retail dealers is a question with constitutional law ramifications in relation to the *measurement* of the tax and not the *imposition* of the tax. On the facts indicated, we hold that there is a statutory basis for imposing the tax. We will now proceed to the crucial questions presented; *i. e.*, whether the imposition of the tax measured by the gross receipts of all wholesale sales to Washington retail dealers is violative of the due process clauses of the federal and state constitutions or the commerce clause of the federal constitution.

Does the tax amount to an attempt by the State of Washington to extend its taxing powers beyond its borders? Or, to put it another way, are the gross proceeds included in the measure of the tax sufficiently related to the nexus of local activity conducted by General Motors to be within the state's power to tax?

Much discussion by both parties in voluminous briefs and in oral argument relates to the significance of the presence of absence of a local office as a criterion for de-

---

[2] We have examined Rule 193 promulgated by the Tax Commission, which it is contended binds the Tax Commission to an interpretation that transactions such has those involved here are beyond statutory coverage. Rule 193 was intended to be a general guide rather than a final interpretation as to transactions covered by the taxing statutes. The preface to the rule states: "Scope of this Rule: This rule governs all matters relating to interstate and foreign commerce. The diversity of problems involved limits the rule to a statement of general principles and the Tax Commission reserves the right to rule upon each question as it arises." It is our view that the Tax Commission's position in this case is consistent with its interpretation reflected in Rule 193, and further, that the Tax Commission did not irrevocably bind itself to a particular interpretation by virtue of Rule 193.

termining whether the state has power to tax a corporation involved in transactions which permeate state boundaries. We do not think it necessary to discuss in detail all of the authorities cited. It suffices to say that we are not persuaded that any case of the United States Supreme Court or of this court dictates the approach that presence or absence of a local office is *the* controlling factor. To allow tax immunity to those who direct business activities from a point just across the state line, regardless of the quantum and effect of local activity, would amount to a discrimination against those who have located offices within the state. And taxation of those who perform *de minimus* activities through a local office would be unreasonable and unjust.

Although location of an office within the state has been of assistance in characterizing the extent of operations and activities within a state (see *Norton Co. v. Department of Revenue* (1951), 340 U.S. 534, 71 S. Ct. 377, 95 L. Ed. 517; *Field Enterprises, Inc., v. State* (1955), 47 Wn. (2d) 852, 289 P. (2d) 1010, *aff'd per curiam,* 352 U.S. 806 (1956); *B. F. Goodrich Co. v. State,* (1951), 38 Wn. (2d) 663, 231 P. (2d) 325, *cert. denied,* 342 U.S. 876 (1951)), the mere physical presence of an office within the state has never been the sole criterion for validating a state's assessment of a tax. Conversely, absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations. See *Brown Foreman Distillers Corp. v. Collector of Revenue,* (1958), 234 La. 651, 101 So. (2d) 70, *cert. denied,* 359 U.S. 28 (1959).

The fact that extensive manufacturing and operational activities of General Motors occur elsewhere has no bearing on the question before this court. The state is not attempting to tax those activities, but rather is seeking to tax business activity in Washington measured by wholesale sales to Washington dealers. Thus, considerations of other activities performed by General Motors are irrelevant to the question of taxable activity in relation to wholesaling transactions. We are considering here only the wholesaling function and the effect of the activities of General Motors in Washington attributable to that function.

Although the facts reveal that General Motors' activities in this state are substantial, no local office is maintained in this state, except for the Class "A" Chevrolet office in Seattle. The activities involved are extensive promotional and service efforts. They pervade virtually every aspect of the retail dealer's operations. The General Motors field organization representatives are intimately associated with the retail dealers on matters pertaining to the dealers accounting and business operational methods; the dealers' sales and service techniques; the dealers' inventory of parts and accessories; the dealers' show-room and service facilities; and the dealers' used-car business. In addition to these tangible and directly-performed activities other activities of a more subtle nature are engaged in within this state and in conjunction with dealers. General Motors' advertising is beamed in via television, exhibited by means of outdoors advertising, and distributed by way of newspapers and magazines. All of these activities are related to sales of General Motors in the sense that they tend to strengthen dealer representation and stimulate consumer demand. Because of the very nature

of the activities, it cannot be said that General Motors directly participates in particular retail sales. Yet the activities undeniably have a very great effect in terms of increasing total retail sales in Washington, thereby increasing also wholesale sales. All of the transactions measured by the tax imposed on these activities are in some degree affected by General Motors' organized promotional efforts.

According to the rule of the *Norton* case, *supra*, reiterated by this court in the *Goodrich* case, *supra*, where extensive business activity occurs within a state, taxation can only be avoided upon a showing that the activities are disassociated from the sales in question. Therefore, it is incumbent upon General Motors to make a showing of disassociation or, at a minimum, some degree of disassociation in order to remove from taxation that portion of sales not attributable to that activity. This has not been done. Although the mechanical aspects of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transaction occurs in Washington where the customer is located and where the demand for the manufactured product exists, in very large degree, as a result of General Motors promotional activities. *Field Enterprises, Inc. v. State, supra; cf: Northwestern States Portland Cement Co. v. Minnesota* (1959), 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. (2d) 421. The activities of General Motors in Washington in relation to these sales provide a sufficient nexus upon which to base the tax. Thus, the state is taxing only that which takes place within its borders, and measuring the tax by transactions which relate sufficiently to the activities in question to be within the requirements of the due process clause.

We turn now to an examination of commerce clause considerations.

The primary considerations for determining the limits of a state's power to tax activities connected with interstate commerce are: (1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage; the discrimination test. (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; the multiple burden test. *Washington-Oregon Shippers Co-operative Association v. Schumacher* (1961), 159 Wash. Dec. 171, 367 P. (2d) 112; and cases cited therein.

It is alleged that, by virtue of RCW 82.04.440,[3] Washington businesses engaged in intrastate commerce receive a commercial advantage; or, conversely stated, that discrimination against interstate commerce results. The alleged commercial advantage arises when an out-of-state manufacturer is compelled to pay the Washington wholesale tax and a manufacturing tax in another state, while the local producer pays only the wholesale tax. However, the advantage, if any, does not result from the Washington imposition of a wholesale tax, but rather from the failure of Washington to impose a tax on the manufacuring activities within its jurisdiction. The essence of this contention is that it is necessary for Washington to tax local manufacturers for the privilege of producing to the same extent that their competitors are subjected to taxation by other states. This is of course not only unnecessary, *B. F. Goodrich v. State, supra,* but is also impossible,

[3] RCW 82.04.440 in essence provides that goods manufactured and sold within the state of Washington are only subject to a wholesale tax.

since there is neither a uniform practice of taxation nor tax rates by states in reference to manufacturing activities within their jurisdictions. Furthermore, this contention does not validly attack the imposition of the wholesale tax, since it is based upon an activity separate and distinct from manufacturing.

The tax in question is applicable to all who engage, within the state, in the business of making sales at wholesale. It is only that local activity which is being subjected to taxation. And the tax is imposed equally upon all who participate in the same activity within the state. Those involved in interstate commerce are not forced to bear any burden not borne by those exclusively engaged in intrastate commerce, so it cannot be said that the tax is discriminatory. *Washington-Oregon Shippers, supra; B. F. Goodrich Co. v. State, supra.*

It is also contended that the state's imposition of a tax on the local wholesaling activities of a company which manufactures its products outside the state subjects that company to multiple tax burdens not borne by those companies which both manufacture and wholesale within the state. (This contention is partially based upon RCW 82.04.440, which has been previously discussed.) This contention of multiple-burden taxation was made in *B. F. Goodrich Co. v. State* (1951), 38 Wn. (2d) 663, 668, 231 P. (2d) 325; *cert. den.* 342 U.S. 876, and it was answered as follows:

> "Because some other state might exercise its undoubted right to tax the privilege of manufacture with respect to goods ultimately sold in Washington (*American Mfg. Co. v. St. Louis,* 250 U.S. 459, 63 L. Ed. 1084, 39 S. Ct. 522; see *Freeman v. Hewit,* 329 U.S. 249, 91 L. Ed. 265, 67 S. Ct. 274), this state need

not forego its right to tax the business of selling those goods. Each state must derive its revenues from what goes on within its own borders. And if Washington's statute exempts local manufacturers from paying their tax as manufacturers, providing they also pay it as sellers, that, as appellant admits, can be of no concern to one who manufactures out of the state.

"Appellant engages in but one local taxable activity —selling—and as to this it is now taxed on a parity with all others who engage in like activity here."

We adhere to this position.

The tax is imposed upon business activity within the state. The measure of the tax is the proceeds from the sales attributable to that activity. No part of the tax is attributed to manufacturing or other activities taking place outside of the state. *Crown Zellerbach Corp. v. State*, 53 Wn. (2d) 813, 328 P. (2d) 884; *cert. denied* 359 U.S. 531 (1958); *U. S. Steel Corp. v. State* (1957), 51 Wn. (2d) 224, 316 P. (2d) 1099. The fact that some other incident occurs elsewhere rendering General Motors liable for a different tax in another state does not mean that multiple burdens are occasioned as a result of the Washington tax, because repeated exactions of the same nature do not occur. *B. F. Goodrich Co. v. State, supra.* We hold that the tax in question is not violative of the commerce clause.

The statements heretofore made in relation to the validity of the tax measured by the gross receipts from Chevrolet Class "B" sales and Pontiac, Oldsmobile, and General Motors Parts Divisions sales are for the most part applicable and dispositive of the questions raised by the cross-appeal. Not only are the same extensive promo-

tional and service efforts performed in connection with Chevrolet Class "A" sales to retail dealers, but addditional activities were undertaken by the Seattle branch office to expedite delivery. *A fortiori* taxes, measured by these transactions, were validly assessed.

With respect to the question raised concerning sales and returns of obsolete parts, the following is dispositive. The pertinent contractual provisions relating to the return of parts read as follows:

> "5. A. During the months of August, September or October of each year, * * * Dealer may return to Chevrolet one shipment of new, unused and undamaged Chevrolet (C & CX) parts purchased from Chevrolet, or purchased from an outgoing Chevrolet dealer as part of Dealer's initial Chevrolet parts stock, for a maximum credit value not to exceed four per cent (4%) of Dealer's net purchases of such parts, excluding batteries and electrolyte, during the previous fiscal year beginning July 1 and ending June 30.
>
> "B. The return of such parts shall be subject to the following conditions:
>
> "(1) Only those Chevrolet (C & CX) parts will be eligible for return hereunder which were listed for service in any of the Chevrolet Dealers Parts and Accessories Price Schedules which were in effect during the current and two preceding fiscal years. Chevrolet will credit Dealer's account for such eligible return parts with the Dealer Net Prices therefor in effect at the time such parts are received by Chevrolet. * * *"

General Motors contends that returned parts transactions are rescinded sales rather than repurchases and,

therefore, excludable from the gross proceeds of sales of products by General Motors to Chevrolet Class "A" retail dealers.

It will be observed that contract provisions specify that dealers receive credit for returns in accordance with prices in effect at the time of the return rather than those in effect at the time of the original purchase. Thus, it is evident that the transactions are in fact repurchases and not rescinded sales. Furthermore, General Motors' contention is based upon the assumption that sales of parts are never final until the specific part is no longer returnable. We do not so interpret the contractual provisions. Accordingly, the trial court was, in our opinion, correct in its conclusion that sales of these items were final, and that returned items were repurchased.

The decision of the trial court is hereby reversed with respect to the appeal initiated by the Tax Commission, and affirmed with respect to the cross-appeal initiated by General Motors.

Finley, C. J.

We Concur:

Hill, J.
Donworth, J.
Weaver, J.
Rosellini, J.
Ott, J.
Hunter, J.
Hamilton, J.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GENERAL MOTORS CORPORATION, a Corporation, *Respondent-Cross Appellant*, v. THE STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellants.*	No. 36001 Thurston County No. 28036

REMITTITUR

(Judgment)

This is to certify that the opinion of the Supreme Court of the State of Washington filed on December 6, 1962, became the final judgment of this court in the above entitled case on January 7, 1963. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows: One Thousand Four Hundred Thirteen and no/100 ($1,413.00) Dollars in favor of appellants and against General Motors Corporation, a corporation.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 8th day of January, A. D. 1963.

/s/ William M. Lowry,
William M. Lowry
Clerk of the Supreme Court,
State of Washington.

Of record in the Office of the Clerk
of the Supreme Court, Journal 48,
at Page 41.

APPENDIX D

STATUTES
CHAPTER 82.04 OF THE REVISED CODE OF WASHINGTON

82.04.040 *"Sale," "casual or isolated sale."* The word "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration * * *.

* * * * *

82.04.060 *"Sale at wholesale," "wholesale sale."* The term "sale at wholesale" or "wholesale sale" means any sale of tangible personal property and any sale of or charge made for labor and services rendered in respect to real or personal property, which is not a sale at retail.

* * * * *

82.04.070 *"Gross proceeds of sales."* The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

* * * * *

82.04.220 *Business and occupation tax imposed.* From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against

value of products, gross proceeds of sales, or gross income of the business, as the case may be.

* * * * *

82.04.240 *Tax on manufacturers.* Upon every person except persons taxable under subsection (2) of RCW 82.04.260[1] engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured, multiplied by the rate of one-quarter of one percent;

The measure of the tax is the value of the products, including by-products, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

* * * * *

82.04.270 *Tax on wholesalers.* Upon every person except persons taxable under subsection (1) of RCW 82.04.260[2] engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent.

* * * * *

82.04.295 *Temporary surtax imposed.* From and after the first day of November, 1951, until the thirtieth day of April, 1953,[3] there is levied and shall be collected from every person for the act or privilege of engaging in busi-

---

[1] This subsection deals with wheat flour manufacturers.

[2] This subsection deals with wholesalers of grain.

[3] Temporary surtax continuously extended, increased, and made permanent at the rate of seventy-six percent by Laws of 1961, Chap. 293, §2; RCW 82.04.296 (1961).

ness activities, as a part of the tax imposed by this chapter and as a temporary increase thereof, a surtax in the amount of twenty percent of the tax payable under this chapter.

* * * * *

82.04.440 *Persons taxable on multiple activities.* Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in: *Provided,* That persons taxable under RCW 82.04.250 or 82.04.270 shall not be taxable under RCW 82.04.230, 82.04.240, or subsection (2) of RCW 82.04.260 with respect to extracting or manufacturing of the products so sold, and that persons taxable under RCW 82.04.240 shall not be taxable under RCW 82.04.230 with respect to extracting the ingredients of the products so manufactured.

* * * * *

82.04.500 *Tax part of operating overhead.* It is not the purpose of this title that the taxes herein levied upon persons engaging in business shall be construed as taxes upon the purchasers or customers, but it is the ontention that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons engaging in business.

APPENDIX E

UNITED STATES CONSTITUTION

Art. I, Sec. 8, clause 3:

"The Congress shall have Power—

* * *

"To regulate Commerce . . . among the several States . . ."

Fourteenth Amendment, Sec. 1:

". . . nor shall any State deprive any person of . . . property, without due process of law; . . ."

MOTION FILED MAY 3 1963 LIBRARY SUPREME COURT, U. S.

No. [redacted]/15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

GENERAL MOTORS CORPORATION,
A CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL, *Appellees*

On Appeal from the Supreme Court of the State of Washington

MOTION FOR LEAVE TO FILE AND BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA

By: LAMBERT H. MILLER
General Counsel

HARVEY M. CROW
Associate General Counsel

ALAN M. NEDRY
Assistant Counsel
918 Sixteenth Street, N. W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL, *Appellees*

On Appeal from the Supreme Court of the State of Washington

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF AMICUS CURIAE

MAY IT PLEASE THE COURT:

The undersigned, as Counsel for The National Association of Manufacturers of the United States of America, Inc., respectfully move this Honorable Court for leave to file the annexed brief *amicus curiae* in this case in support of the Jurisdictional Statement of Appellant.

1. The National Association of Manufacturers is a non-profit membership corporation organized under the laws of the State of New York.

2. The Association is composed of and financially supported by the more than 16,000 member companies engaged in manufacturing and related activities throughout the United States. A significant percentage of these association members are small business. About 83 percent employ fewer than 500 persons and nearly 50 percent have less than 100 employees.

3. Most of these member companies engage in commercial activities in interstate commerce and utilize varying forms of marketing and distribution techniques in the sale of their products.

4. The undersigned Counsel for this Association wrote to the attorneys for the parties in this case requesting their consent to file a brief *amicus curiae* in support of the Jurisdictional Statement of Appellant.

5. Counsel for General Motors Corporation, Aloysius F. Power, Esq., granted consent to the filing of such brief *amicus curiae* in a letter dated March 5, 1963.

6. The State of Washington, through an Assistant Attorney General, Timothy R. Malone, Esq., responding for its Attorney General, declined consent in a letter dated March 11, 1963.

7. This Association has an interest in this case because it involves basic constitutional issues under the Commerce and Due Process Clauses which require resolution and clarification by this Court. The decision below, if left standing, will generate confusion and uncertainty which can have a far-reaching effect on the selling and distribution techniques utilized by many members of this Association engaged in interstate commerce. This effect could be of particular consequence to our medium and small-sized members.

8. It is respectfully submitted that this case affords an appropriate occasion for the Court to grant leave to file the brief annexed hereto.

We therefore urge that leave be granted and respectfully so move the Court.

Respectfully submitted,

LAMBERT H. MILLER
General Counsel

HARVEY M. CROW
Associate General Counsel

ALAN M. NEDRY
Assistant Counsel
918 Sixteenth Street, N. W.
Washington 6, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL, *Appellees*

On Appeal from the Supreme Court of the State of Washington

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AS AMICUS CURIAE

JURISDICTION, STATUTES INVOLVED, AND STATEMENT OF CASE

The Court's attention is respectfully invited to the Jurisdictional Statement of Appellant, in which these elements are set forth in detail for the information of the Court.

QUESTION

The basic issue presented in this case is whether the State of Washington may constitutionally levy its unapportioned business and occupation privilege franchise tax measured by gross receipts on wholesale sales in interstate commerce.

The facts of this case, as outlined by the Supreme Court of Washington in its opinion below, 376 P. 2d

893 (1962), reveal that Appellant's business activities, which are the point of contention, involve only promotional and service contacts with independent retail automobile dealers in that State which are performed by a small number of subordinate resident employees and other representatives traveling from outside of the State of Washington. The Supreme Court of Washington pointed to these limited activities and the presence of customers plus advertising "beamed in via television, exhibited by means of outdoor advertising, and distributed by way of newspapers and magazines" and held them to be "a sufficient nexus" to uphold application of the State's franchise tax on gross receipts. It should be noted that Appellant's instate activities did *not* include manufacturing or solicitation, acceptance or filling of orders, receipt of payment, delivery of goods, establishment of credit, or other similar activities.

ARGUMENT

In holding that mere performance of limited promotional and service activities plus an advertising program carried on through various communications media, constituted a "sufficient nexus" upon which to apply the Washington gross receipts tax, the Court below relied upon certain decisions of this Court. We submit that these cases were erroneously applied to the instant situation.

One of the cases relied upon by the State of Washington is the recent *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U.S. 450, 79 S. Ct. 357 (1959), which involved the imposition of an apportioned net income tax, as distinguished from the unapportioned gross receipts tax in the instant matter. However, it is made clear in *Northwestern* that even

a net income tax, to stand the test of constitutionality, must be non-discriminatory and be properly apportioned to local activities based upon a legal nexus which can support the tax. *Northwestern* also stands for the principle that a tax cannot stand which compels a taxpayer to pay for the privilege of engaging in interstate commerce. *Northwestern* specifically noted at p. 458, "Moreover, it is beyond dispute that a State may not lay a tax on the 'privilege' of engaging in interstate commerce, *Spector Motor Service, Inc.* v. *O'Connor*, 340 U.S. 602, 95 L. Ed. 573, 71 S. Ct. 508 (1951)."

The State of Washington contends not only that the limited activities engaged in within the State are such that they justify taxing that which takes place within its borders, but would extend such concept to embrace all of the revenue derived from activities engaged in primarily outside the State. This premise is advanced notwithstanding that the legal incidents of sale occur out of the State and that portion which takes place in-state is *de minimis*. This Court has earlier said in *Cooney* v. *Mountain States Telephone and Telegraph Co.*, 294 U.S. 384, 392 (1935):

> "And the fact that a portion of a business is intrastate and therefore taxable does not justify a tax either upon the interstate business or upon the whole business without discrimination."

The case of *Norton Co.* v. *Dept. of Revenue*, 340 U.S. 534 (1951), recognizes that an interstate seller can have both interstate and intrastate activities, but if such business is so commingled as to be difficult of separation, the taxpayer proceeds at his peril. In *Norton* this Court said that the taxpayer had failed to establish that certain interstate sales were dissociated from the retail store which had some contact with both

local and interstate sales. The Court below has, we submit, misapplied the doctrine of *Norton* to the instant situation by holding that it extended to General Motors sales which had no contact with any office in the State of Washington and were clearly of a class held not taxable in *Norton*. This unwarranted application of the *Norton* case rule rests on the premise that the taxpayer was required to "dissociate" its promotional activities from the taxed sales as distinguished from dissociating the activities of a local store. *Norton* tells us if there are separable and dissociated transactions, they must be recognized and the interstate seller is protected by interstate immunity. The record here and the facts as reviewed in the opinion below would clearly indicate identifiable and separable activities wholly unrelated to the taxed sales, which activities paid their own tax. To fail to recognize such factors or disregard them because of "promotional activities" is to place purely interstate business in an indefensible position.

The Court below seems to place great reliance and emphasis on the fact that Appellant engages in several forms of advertising in various media to attract potential car buyers to the place of business of independent local dealers. This concept creates a new rule of law, particularly with respect to advertising media that project on a national basis. Is advertising in a national magazine or via a nation-wide television network to expose an interstate vendor to the grip of state taxation? The Court below specifically notes that such advertising, and other promotions, "tend to strengthen dealer representation and stimulate consumer demand." Yet, in the next breath it is noted that General Motors does not participate in the ultimate retail

sale—this is done by the independent local dealer. How then can these inconsistences be reconciled by the rule of law applied here to justify imposition of this tax on identifiable and separable interstate activities? In the *Norton* case this Court recognized that an interstate vendor could operate in the local market in direct sales and be protected by and entitled to the immunity of interstate commerce. Here there is no local contact with the ultimate vendee and the immunity of interstate commerce would be nullified if the decision below stands.

CONCLUSION

This decision below with the broad ramifications and uncertainties that are bound to flow is of concern and economic consequence to interstate marketers. Such a rule of law would patently erect stateline barriers to the flow of interstate commerce and thus discriminate. We submit that the great national market that is to be protected by the immunity of interstate commerce would suffer.

The problems, both legal and economic, that have been generated by developments in the area of so-called state taxation of interstate commerce have been brought into sharp focus in recent years. Following the *Northwestern* case, *supra,* and related decisions of this Court, the Congress saw fit to enact a new law[1] which affords a limited exemption in the apportioned net income tax field.

This action by the Congress reflects its growing concern regarding the free movement of interstate commerce and the complexities of state taxation in relation to national commerce. The report[2] of the Com-

[1] Public Law 86-272, as amended.

[2] H. Rept. No. 936, p. 2, 86th Congress, 1st Session.

mittee on the Judiciary, U. S. House of Representatives, clearly stated this concern by noting:

> "Businessmen should not be forced to guess about their tax liability. Nor should they be subject to the kind of state taxation which would Balkanize the American economy."

Similarly, the Senate Committee on Finance in its report[3] to Congress stated:

> "Your committee believes that, unless some certainty is restored to this area, the economic implications for the economy of the entire nation may be unfortunate."

This concern over the economic implications of undue extensions of state taxation to the channels of interstate commerce serves to point up the substantial national issues involved in this litigation. We respectfully contend that a substantial federal question of great consequence to large numbers of interstate vendors and taxpayers has been decided erroneously by the Court below. We, therefore, urge and join with Appellant in requesting that this Court note probable jurisdiction and that the cause be fully heard, considered and determined.

Respectfully submitted,

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA

By: LAMBERT H. MILLER
General Counsel

HARVEY M. CROW
Associate General Counsel

ALAN M. NEDRY
Assistant Counsel
918 Sixteenth Street, N. W.
Washington 6, D. C.

---

[3] S. Rept. No. 658, p. 4, 86th Congress, 1st Session.

LIBRARY
SUPREME COURT, U. S.

MOTION FILED MAY 3 1963

No. [redacted] 115

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

GENERAL MOTORS CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL., *Appellees*

MOTION FOR LEAVE TO FILE BRIEF, AND BRIEF AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT, OF THE NATIONAL COAL ASSOCIATION

ROBERT E. LEE HALL,
RICHARD L. HIRSHBERG,
Coal Building
1130 Seventeenth Street, N. W.
Washington 6, D. C.
Attorneys for Amicus Curiae

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
MOTION FOR LEAVE TO FILE BRIEF *Amicus Curiae* OF THE NATIONAL COAL ASSOCIATION	1
BRIEF *Amicus Curiae* OF THE NATIONAL COAL ASSOCIATION	5
Interest of *Amicus Curiae*	5
Argument	
I. Introduction	5
II. The business and occupation tax of the State of Washington, as interpreted and applied by the highest court of that State, violates the Commerce Clause of the United States Constitution	8
III. Conclusion	17

CITATIONS

CASES:

Brown-Forman Distillers Corp. v. *Collector of Internal Revenue*, 359 U.S. 28 (1959) 16
Commissioner v. *Eastman Kodak Co.*, 385 Pa. 607, 124 A. 2d 100 (1956) 3
Commonwealth v. *Eastern Motor Express, Inc.*, 398 Pa. 279, 157 A. 2d 79 (1959) 3
Cooney v. *Mountain States Telephone & Telegraph Co.*, 294 U.S. 384 (1935) 14
International Shoe Co. v. *Fontenot*, 359 U.S. 984 (1959) 16
Northwestern States Portland Cement Co. v. *Minnesota*, 358 U.S. 450 (1959) 13, 16
Norton Co. v. *Department of Revenue of State of Illinois*, 340 U.S. 534 (1951) 4, 14
Railway Express Agency v. *Virginia*, 347 U.S. 359 (1954) 3
Railway Express Agency v. *Virginia*, 358 U.S. 440 (1959) 3
Roy Stone Transfer Corp. v. *Messner*, 377 Pa. 234, 103 A. 2d 700 (1954) 3
Spector Motor Service, Inc., v. *O'Connor*, 340 U.S. 602 (1951) 3, 9, 12, 13

Page

CONSTITUTION:

Article I, Section 8, Clause 3 (the Commerce Clause) 8

STATUTES:

Connecticut Corporation Business Tax Act of 1935, Section 418c 12
Public Law 86-272, Title I, Section 101, 73 Stat. 355, 15 U.S.C. Sections 381-4 ..... 15, 16
Revised Code of Washington (RCW), 82.04.220, 82.04.270 (Business and Occupation Tax) 6, 8

MISCELLANEOUS:

Conference Report No. 1103 (1959) 16
House Report No. 936 (1959) 16
Senate Report No. 658 (1959) 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL., *Appellees*

MOTION FOR LEAVE TO FILE BRIEF, AND BRIEF AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT, OF THE NATIONAL COAL ASSOCIATION

Pursuant to Rule 42 of the Rules of the Supreme Court of the United States, the National Coal Association respectfully moves for leave to file the accompanying brief in support of the Jurisdictional Statement of the Appellant as *amicus curiae* in this case. The consent of the Appellant has been granted. The consents of the Appellees have been requested, but have not been granted.

The National Coal Association is a trade association whose members mine and market more than two-thirds of the commercially produced bituminous coal in the United States.

The basic question involved in the present case is the power of a state to levy a tax on the privilege of engaging in interstate commerce measured by gross receipts from interstate commerce.

Approximately 75 percent of all coal produced in the United States is shipped in interstate commerce. A considerably larger portion of the commercially produced coal (that is, coal produced from other than "captive" mines owned and operated by steel companies, etc.) is shipped interstate. The exact figures are not available.

Based on an assumption that 75 percent of all coal produced in the United States is shipped interstate, the value of such interstate shipments would be approximately $2,510,000,000 for the year 1962. This figure is derived by multiplying the total coal production of 423 million tons in 1962 by the average value at the mine of $4.54 per ton plus the average rail freight rate of $3.37 per ton, and applying 75 percent to the result.

Several states and political subdivisions thereof other than the State of Washington levy taxes based on gross receipts. Two important examples of states into which large quantities of coal are shipped are Indiana and Michigan. In 1961, 19,891,000 tons of coal, with a value of $88,861,000, were shipped into Indiana from outside the state. In 1961, 24,327,000 tons of coal, with a value of $105,452,000, were shipped into Michigan from outside the state.[1]

[1] The comparable figures for the years 1957-1960 are as follows:

State	1957		1958		1959		1960	
	Thous. Tons	Value (Thous.)	Thous. Tons	Value (Thous.)	Thous. Tons	Value (Thous.)	Thous. Tons	Value (Thous.)
Indiana	22,510	$117,228	19,149	$93,731	19,294	$90,941	19,882	$91,778
Michigan	26,255	128,629	22,398	103,635	27,235	123,923	25,076	112,217

In the present case, the State of Washington has levied a tax amounting to 3/10 of 1 percent (.003) of gross sales of the Appellant to retail dealers within the state. Assuming that each of the states into which coal is shipped were to levy a tax of even 3/10 of 1 percent on gross sales, such taxes would total approximately $7,530,000 for the year 1962 (based on the assumption of approximately $2,510,000,000 worth of coal having been shipped interstate in 1962, as computed above). It is significant to note that this figure would closely approximate the total net income of all bituminous coal mining corporations filing income tax returns in 1959 ($8,027,000) and 1960 ($8,097,000)—the last two years for which figures are available.[2]

Thus it is apparent that the outcome of the present case could have a tremendous future impact upon the coal industry. If the decision of the Supreme Court of Washington is permitted to stand, furthermore, large tax liabilities for an indeterminate number of past years could be incurred by the coal industry, due to the fact that most states do not have a statute of limitations which applies when no tax return has been filed.

The decision of the Supreme Court of Washington is in conflict with the decisions of other state courts, and is entirely inconsistent with prior decisions of this Court. *Roy Stone Transfer Corp.* v. *Messner*, 377 Pa. 234, 103 A.2d 700 (1954); *Commissioner* v. *Eastman Kodak Co.*, 385 Pa. 607, 124 A.2d 100 (1956); *cf. Commonwealth* v. *Eastern Motor Express, Inc.*, 298 Pa. 279, 157 A.2d 79 (1959). *Railway Express Agency* v. *Virginia*, 347 U.S. 359 (1954); *cf. Railway Express Agency* v. *Virginia*, 358 U.S. 440 (1959). *Spector Motor Service, Inc.* v. *O'Connor*, 340 U.S. 602 (1951); *cf.*

[2] Source: Statistics of Income, U.S. Internal Revenue Service.

Norton Co. v. *Department of Revenue of State of Illinois*, 340 U.S. 534 (1951).

To permit the states to tax gross receipts from interstate commerce, as the Supreme Court of Washington has decided in the present case, would impose a direct and crippling burden on interstate commerce, and particularly would have a serious, and perhaps disastrous, effect upon the bituminous coal industry. It is respectfully submitted that, because of the public importance of the issues involved in this case, the Court should determine that substantial constitutional questions are presented and should note probable jurisdiction.

Respectfully submitted,

ROBERT E. LEE HALL,
RICHARD L. HIRSHBERG,
Coal Building
1130 Seventeenth Street, N. W.
Washington 6, D. C.
Attorneys for Amicus Curiae

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION, *Appellant*

v.

STATE OF WASHINGTON, ET AL., *Appellees*

BRIEF AMICUS CURIAE OF THE NATIONAL COAL ASSOCIATION

INTEREST OF AMICUS CURIAE

The interest of the *amicus curiae* in this case is set forth in the motion to which this brief is attached.

ARGUMENT

I. Introduction

The Supreme Court of Washington has upheld the assessment of the Washington Business and Occupation Tax on the unapportioned gross proceeds of wholesale sales of automobiles, trucks, parts and accessories by General Motors, a Delaware Corporation, to independent retail dealers in the State of Washington

(*General Motors Corporation* v. *The State of Washington et al.*, 376 P. 2d 843).

The statute in question, hereafter referred to as the Business and Occupation Tax, imposes a tax in the following general terms (RCW 82.04.220):

> "*Business and occupation tax imposed.* . . . there is levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

The specific provision of the statute under which General Motors was held to be liable for the tax is RCW 82.04.270, providing in pertinent part:

> "*Tax on wholesalers, distributors.* (1) Upon every person . . . engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate . . . ."

RCW Chapter 82.04, "Business and Occupation Tax", is a part of RCW Title 82, "Excise Taxes."

The present case, when it reached the Supreme Court of Washington, involved cross-appeals from a judgment of the Superior Court for Thurston County (No. 28036, March 16, 1961). The judgment of the trial court partly sustained and partly rejected the contentions of General Motors. Briefly stated, this judgment:

> (1) Refunded to General Motors $87,253.34 in business and occupation tax (and interest) assessed on wholesale sales of motor vehicles, parts and

accessories to Chevrolet dealers in the nine southern counties of Washington (so-called "Chevrolet Class B Transactions") and to Pontiac and Oldsmobile dealers in the entire state, and enjoined further assessment on similar transactions; and

(2) Denied the claim of General Motors for refund of $232,584.95 in business and occupation tax (and interest) assessed on wholesale sales of motor vehicles, parts and accessories to Chevrolet dealers in Washington other than in the nine southern counties (so-called "Chevrolet Class A Transactions"), and denied injunctive protection against similar assessments in the future.

The only substantial difference between "Chevrolet Class A Transactions" and the other transactions at issue is that with respect to the former transactions General Motors, during the relevant periods, maintained a branch office in Seattle, Washington.

On appeal, the Supreme Court of Washington ruled against General Motors on both of these points. It reversed the decision of the trial court with respect to the appeal initiated by the State of Washington and affirmed it with respect to the cross-appeal initiated by General Motors.

Amicus curiae addresses its arguments solely to the constitutionality, under the Commerce Clause of the United States Constitution, of the application of the Business and Occupation Tax to the gross proceeds of the wholesale sales of motor vehicles, parts and accessories by General Motors to Chevrolet dealers in the nine southern counties of Washington (so-called "Chevrolet Class B Transactions") and to Pontiac and

Oldsmobile dealers in the entire state of Washington. (By so limiting its arguments, *amicus curiae* does not imply that other issues in this case were correctly decided by the Supreme Court of Washington.)

II. The Business and Occupation Tax of the State of Washington, as Interpreted and Applied by the Highest Court of that State, Violates the Commerce Clause of the United States Constitution

Revised Code of Washington 82.04.220 imposes a tax on "the act or privilege of engaging in business activities." As interpreted and applied by the Supreme Court of Washington, the Business and Occupation Tax imposes a direct burden on interstate commerce, and therefore violates the Commerce Clause of the Constitution, Article I, Section 8, Clause 3, as consistently interpreted by the Supreme Court of the United States.

In upholding the assessment of the Business and Occupation Tax on wholesale sales of motor vehicles, parts and accessories to Chevrolet dealers in so-called "Chevrolet Class B Transactions" and to Pontiac and Oldsmobile dealers throughout the State of Washington, the State Supreme Court applies the tax "to all who engage, within the state, in the business of making sales at wholesale" (376 P. 2d 843, 851), further stating (*ibid.*):

> "It is only that local activity which is being subjected to taxation."

The Washington Court's examination of Commerce Clause considerations is limited solely to what it terms "the primary considerations for determining the limits of a state's power to tax activities connected with interstate commerce," which are (*ibid.*):

> "(1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage; the discrimination test. (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; the multiple burden test."

Applying only these criteria, the court holds—erroneously, we respectfully submit—"that the tax in question is not violative of the commerce clause" (*id.*, 852).

No mention whatsoever is made of the controlling doctrine laid down in *Spector Motor Service, Inc.*, v. *O'Connor*, 340 U.S. 602 (1951).

In reaching its decision, the Supreme Court of Washington flatly states (*ibid.*):

> "The tax is imposed upon business activity within the state."

Accepting the facts as stated by the Washington Court, it is difficult to find any activities of General Motors, related to the transactions to which *amicus curiae* addresses itself, which are not an integral part of interstate commerce. According to the opinion (*id.*, 845):

> "All of the products herein concerned are manufactured outside of the state and shipped into the state. Activities conducted primarily outside the state include the design, engineering, fabrication, assembly and delivery of products; the procurement of materials, components and supplies; the general, executive, operating, financial and sales management; the receipt, processing, recording, approving, accepting and filling of orders; the billing and receipt of payment, the investigation, ap-

> proval and execution of customer contracts (dealer franchises); the investigation and extension of credit; the composition and placement of advertising; and others."

As further pointed out by the Washington Supreme Court (*id.*, 847),

> "The trial court found that the relationship between retailers and General Motors is that of independent purchaser and seller, and it cannot be said that General Motors had a 'dealer organization' within its hierarchy."

The only "business activity within the state" in which General Motors was engaged consisted of measures directed toward the promotion of interstate sales, which are described by the Court as follows (*id.*, 845):

> ". . . the establishment and maintenance of effective dealer representation, partially accomplished by arranging various sales and incentive contests and programs offered and conducted, separately or jointly, with the dealer and other components of the General Motors organization [sic];[1] national and local advertising programs conducted by General Motors through various media; joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of the dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; and on the job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service

[1] *Quaere* as to how the phrase "the dealer and other components of the General Motors organization" can be squared with the trial court's finding (which the Supreme Court of Washington accepted) that "it cannot be said that General Motors had a 'dealer organization' within its hierarchy", *id.*, 847.

rendered to the retail purchaser of General Motors' products."

All of these activities are inseparable parts of interstate commerce, since they relate directly, and are incidental, to sales made by General Motors outside the State of Washington followed by the shipment of goods to dealers within the State. This fact seems to be tacitly recognized by the Supreme Court of Washington when it states (*ibid.*, emphasis added):

> "During the audit periods here in question, the trial court found that General Motors was engaged in business activity within the state. This activity involved the sale of automobiles, trucks, parts and accessories to retail dealers, *and also included* the establishment and maintenance of effective dealer representation. . . ."

The Court then went on to list the other activities, incidental to wholesale sales, in the passage quoted *supra*, page 10. Similarly, the Court recognized that (*id.*, 846):

> "General Motors achieves its wholesale sales of the automobiles, trucks, parts and accessories by the development and maintenance of a strong retail dealer representation, . . ."[2]

That no separable local activities were involved also seems to be the evident conclusion to be drawn from the following statements of the Court (*id.*, 849):

> "General Motors accomplishes wholesale sales of its products to retail dealers within the state. Part of the activities involved in these wholesale sales

[2] If this sentence means that the sales upon which these assessments are based were made in Washington, it conflicts with the recital quoted *supra*, pp. 9-10.

take place elsewhere; *e.g.*, orders are filled, delivery made, and payment is received outside of the state. Nonetheless, business activities having a relation to wholesale sales are conducted in Washington. These activities provide an incident upon which the taxing statute operates."

This being the incidence of the Business and Occupation Tax, such tax, as applied to and measured by the gross receipts from all wholesale sales of General Motors to Washington retail dealers, clearly violates the Commerce Clause.

Spector Motor Service, Inc., v. *O'Connor*, 340 U.S. 602 (1951), controls the present case. This Court held in that case that the Commerce Clause prohibits the imposition of even a non-discriminatory tax on the privilege of engaging in interstate commerce (even if the tax base is net income fairly apportioned to the taxpayer's activities within the state).

The Connecticut Corporation Business Tax Act of 1935, which this Court invalidated in *Spector, supra*, although employing a radically different measure, in its incidence was similar to the Washington Business and Occupation Tax, and provided in pertinent part (*id.*, 603, note 1):

"Sec. 418c. Imposition of tax. . . . every other corporation or association carrying on business in this state . . . shall pay, annually, a tax or excise upon its franchise for the privilege of carrying on or doing business within the state . . ."

Concluding that the application of this tax to a Missouri corporation engaged exclusively in interstate trucking violated the Commerce Clause, the Court said (*id.*, 608-9):

"The answer in the instant case has been made clear by the courts of Connecticut. It is not a

> matter of labels. The incidence of the tax provides the answer. The courts of Connecticut have held that the tax before us attaches solely to the franchise of petitioner to do interstate business. The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State."

Similarly, the answer in the present case has been made clear by the Supreme Court of Washington. By holding that Washington "business activities having a relation to wholesale sales" from General Motors to Washington retailers in interstate commerce "provide an incident upon which the taxing statute operates," the State Court has decided that the statute taxes the privilege of engaging in interstate commerce (376 P. 2d 843, 849).

Under the principles laid down by this Court in *Spector Motor Service, Inc.*, v. *O'Connor, supra,* and later reaffirmed in *Northwestern States Portland Cement Co.* v. *Minnesota,* 358 U.S. 450 (1959), the Washington Business and Occupation Tax is invalid as applied in this case. In *Northwestern,* the Court said (358 U.S. 450, 458; *dictum*):

> "It has long been established doctrine that the Commerce Clause gives exclusive power to the Congress to regulate interstate commerce, and its failure to act on the subject in the area of taxation nevertheless requires that interstate commerce shall be free from any direct restrictions or impositions by the States. *Gibbons* v. *Ogden,* 9 Wheat. 1 (1824). In keeping therewith a State 'cannot impose taxes on persons passing through the state, or coming into it merely for a temporary purpose' such as itinerant drummers. *Robbins* v. *Taxing District,* 120, U.S. 489, 493-494 (1887). Moreover, it is beyond dispute that a State may

> not lay a tax on the privilege of engaging in interstate commerce, *Spector Motor Service, Inc.*, v. *O'Connor*, 340 U.S. 602 (1951)."

Norton Co. v. *Department of Revenue of State of Illinois*, 340 U.S. 534 (1951), is cited by the Supreme Court of Washington in support of its holding that the promotional activities of General Motors in relation to its wholesale sales to retail dealers in Washington "provide a sufficient nexus upon which to base the tax" for purposes of satisfying the requirements of the Due Process Clause (376 P. 2d 843, 851).

There is nothing in the *Norton* case to suggest, even remotely, that the Washington Business and Occupation Tax satisfies the requirements of the Commerce Clause. That case involved the Illinois Occupation Tax. This Court pointed out (340 U.S. 534, 535-6):

> "The statute specifically exempts business in interstate commerce as required by the Constitution, and the question is whether the State has exceeded the constitutional range of its taxing power by taxing all of petitioner's Illinois derived income."

In the *Norton* case, this Court also pointed out that a "concern does not, by engaging in business within the State, lose its right to do interstate business with tax immunity" (340 U.S. 534, 539), citing for this proposition *Cooney* v. *Mountain States Telephone & Telegraph Co.*, 294 U.S. 384 (1935).

In the *Cooney* case, the Court significantly stated (*id.*, 392-3):

> "There is no question that the state may require payment of an occupation tax from one engaged in

> both intrastate and interstate commerce. But a state cannot tax interstate commerce; it cannot lay a tax upon the business which constitutes such commerce or the privilege of engaging in it. And the fact that a portion of a business is intrastate and therefore taxable does not justify a tax either upon the interstate business or upon the whole business without discrimination."

In 1959 Congress acted to restrict the application of net income taxes to income derived from interstate commerce (P.L. 86-272, Title I, § 101, 73 Stat. 555, 15 U.S.C. §§ 381-4).

P. L. 86-272 provides, in general, that no State shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person are either or both of the following (15 U.S.C. § 381(a)):

> "(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
>
> "(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1)."

The purpose of this Act of Congress was to provide as the minimum jurisdictional requirement for the imposition of net income taxes the presence of an office

or similar permanent establishment within the State asserting liability for tax, thus dispelling certain doubts as to the potential out-of-state reach of net income taxes, which had been raised by this Court's decision in *Northwestern States Portland Cement Co.* v. *Minnesota, supra,* as well as by the denial of certiorari in *Brown-Forman Distillers Corp* v. *Collector of Internal Revenue,* 359 U.S. 28 (1959), and in *International Shoe Co.* v. *Fontenot,* 359 U.S. 984 (1959) (see House Report No. 936, Senate Report No. 658, and Conference Report No. 1103 (1959)).

When the Congress enacted P.L. 86-272, it clearly assumed that, as stated in the *Northwestern* case (358 U.S. 450, 458):

> "... it is beyond dispute that a State may not lay a tax on the privilege of engaging in interstate commerce."

This assumption that "privilege" taxes on interstate commerce based on unapportioned gross receipts were plainly unconstitutional is demonstrated by the fact that the Congress limited the impact of the 1959 Act to net income taxes, which it defined as taxes "imposed on, or measured by, net income" (15 U.S.C. § 383).

It would certainly frustrate the will of the Congress—to whom the Commerce Clause gives the exclusive power to regulate interstate commerce—for this Court to fail to reverse the present decision of the Supreme Court of Washington. The anomalous result would be that the application to interstate commerce of a "privilege" tax measured by the gross proceeds of sales would be permitted in situations where, by Act of Congress, even an apportioned net income tax could not be levied.

III. Conclusion

Amicus curiae respectfully submits that the decision of the Supreme Court of Washington extends the taxing power of the State beyond the limitations imposed by the United States Constitution, in particular the Commerce Clause thereof, and is seriously detrimental to interstate commerce.

The questions presented by this appeal are constitutionally substantial. Furthermore, their proper determination is of great public importance, and is of vital importance to the interests of the bituminous coal industry of the United States which *amicus curiae* is authorized to promote and protect.

Respectfully submitted,

ROBERT E. LEE HALL,
RICHARD L. HIRSHBERG,
Coal Building
1130 Seventeenth Street, N. W.
Washington 6, D. C.
Attorneys for Amicus Curiae

LIBRARY
SUPREME COURT, U. S.
MOTION FILED MAY 3 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. [redacted] 115

GENERAL MOTORS CORPORATION,

Appellant,

v.

STATE OF WASHINGTON, *et al.*,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF, AND BRIEF *AMICUS CURIAE* IN SUPPORT OF THE JURISDICTIONAL STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION.

HARRY G. MASON
1 Summer Avenue
Newark 4, N. J.

WALTER H. BEAMAN
570 Lexington Avenue
New York 22, N. Y.
Attorneys for Amicus Curiae

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

INDEX.

	PAGE
Motion for Leave to File Brief *Amicus Curiae*	1
Brief *Amicus Curiae*	4
The Issue	4
The Argument	5
The Direct Burdens Test	5
The Multiple Burdens Test	6
Due Process Considerations	7
The Need for Clarification by this Court	8
Conclusion	10

CASES CITED.

	PAGE
Alpha Portland Cement Co. v. *Massachusetts*, 268 U. S. 203 (1925)	9
Cheney Bros. Co. v. *Massachusetts*, 246 U. S. 147 (1918)	6, 9
Field Enterprises, Inc. v. *Washington*, 352 U. S. 806 (1956); 47 Wash. 2d 852, 289 P. 2d 1010 (1955)	6, 8, 9
Hans Rees Sons, Inc. v. *North Carolina*, 283 U. S. 123	8
International Shoe Co. v. *Fontenot*, 236 La. 279, 107 So. 2d 640 (1959)	9
Miller Bros. Co. v. *Maryland*, 347 U. S. 340 (1954)	7
Northwestern States Portland Cement Co. v. *Minnesota*, 358 U. S. 450 (1959)	5, 6, 9, 10
Norton Co. v. *Department of Revenue of Illinois*, 340 U. S. 534 (1951)	6, 8
Philadelphia & Southern S. S. Co. v. *Pennsylvania*, 122 U. S. 326 (1887)	5, 6
Railway Express Agency, Inc. v. *Virginia*, 358 U. S. 434 (1959)	6
Spector Motor Service, Inc. v. *O'Connor*, 340 U. S. 602 (1951)	5, 9
West Publishing Co. v. *McColgan*, 328 U. S. 823 (1946)	9

STATUTE.

15 U. S. C. §381, *et seq.*	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

GENERAL MOTORS CORPORATION,

Appellant,

v.

STATE OF WASHINGTON, *et al.*,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICUS CURIAE* IN SUPPORT OF THE JURISDICTIONAL STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION.

Pursuant to Rule 42 of the Rules of the Supreme Court of the United States, the Electronic Industries Association respectfully moves this Court for leave to file the accompanying brief in support of the appeal by General Motors Corporation in the instant case. Counsel for Appellant have stated that they consent to the filing of this brief, but counsel for the Appellee has refused.

The Electronic Industries Association (herein called EIA) has approximately 350 member companies manufacturing electronic devices who transact business throughout the United States. It is the national association representing the fifth largest manufacturing industry in the United States with gross annual sales in excess of $10 billion. The

vast majority of its members represent electronic companies doing business of $25 million a year or less.

Generally, the large members of the Association have their own distribution outlets through subsidiaries and divisions. However, with respect to the smaller members, the situation differs. Many, if not all, of the smaller members have salesmen traveling through many states calling on dealers', distributors' or manufacturers' representatives who, in turn, sell the products of the electronic manufacturer located in other states.

In connection with the sale and distribution of the products of most EIA members it is essential that the manufacturer provide engineering advice and service to the ultimate customer who would be unable to fit the electronic product into his own operation without such advice and assistance.

Under the theory espoused by the Supreme Court of the State of Washington it would appear that the services of the salesman, the manufacturer's representative, and the engineer would permit the imposition of the unapportioned gross receipts tax on any sales made to customers located within Washington or such other states as may have gross receipts taxes or who may hereafter enact such taxes to take advantage of the decision rendered by the Supreme Court of the State of Washington.

The applicant Association has an interest in this case by reason of the substantial effect of the Washington decision, if allowed to stand, upon its member companies, not only with respect to their commerce in that State but in other States as well. Applicant wishes to clarify the presentation of the important constitutional questions presented

by this appeal as they relate to its members, and to show the far-reaching effect of this decision on the interstate commerce of a substantial segment of American industry.

Respectfully submitted,

HARRY G. MASON
1 Summer Avenue
Newark 4, New Jersey

WALTER H. BEAMAN
570 Lexington Avenue
New York 22, New York
Attorneys for *Amicus Curiae*

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

GENERAL MOTORS CORPORATION,

Appellant,

v.

STATE OF WASHINGTON, *et al.*,

Appellee.

BRIEF *AMICUS CURIAE* OF ELECTRONIC INDUSTRIES ASSOCIATION.

The Issue.

The issue is whether, consistent with the Commerce Clause, a State may lay upon interstate commerce a tax on the privilege of doing business, measured by the unapportioned gross receipts therefrom; and if so, whether consistent with the Due Process Clause of the XIV Amendment, such an unapportioned gross income tax is valid when applied to interstate sales of goods manufactured in other States and shipped by the manufacturer to customers in the taxing State pursuant to orders received and accepted at an out-of-State office, and not channeled through any place of business in the taxing State.

Argument.

This *amicus curiae* views this case as having in the gross income tax field a nation-wide importance because of its far-reaching consequences, which may not be generally understood.

The Direct Burdens Test.

The tax here is levied on the vendor for the privilege of doing business in Washington. It was measured in this case by gross receipts from interstate sales, all intrastate sales having been separately and fully taxed.

At least since *Philadelphia & Southern S. S. Co.* v. *Pennsylvania*, 122 U. S. 326 (1887), a state tax on the unapportioned gross receipts from interstate commerce has been viewed as a direct burden on that commerce, amounting to an unconstitutional regulation thereof.

This Court has specifically held that a tax levied on the privilege of engaging in business activities cannot be applied to commerce that is exclusively interstate, even though the measure of the tax is *net* income properly apportioned to substantial activities within the state. *Spector Motor Service, Inc.* v. *O'Connor*, 340 U. S. 602 (1951). It will be recalled that in *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450 (1959), this Court was careful not to disturb its holding in the *Spector* case. If a franchise or privilege tax measured by properly apportioned *net* income is invalid if applied to purely interstate commerce involving substantial activity within the State, an unapportioned *gross* income tax levied on interstate transactions must *a fortiori* be invalid.

The *Spector* tax was invalid because of its subject (the privilege of engaging in interstate commerce), though its

measure was unobjectionable. The *Philadelphia & Southern* tax was invalid because its measure (gross receipts from interstate comerce) made it equivalent to a burden on and a regulation of interstate commerce. The instant tax, being levied on the privilege of doing interstate business and measured by unapportioned gross receipts therefrom, is bad on both counts.

Thus the Washington Supreme Court, over Commerce Clause objection, has sustained a tax which both by reason of its subject and its measure is not constitutionally applicable to interstate commerce under the principles heretofore developed by this Court. There are no special circumstances to justify the results reached below: the tax is not an apportioned levy "in lieu of" a valid tax on property in the state, cf. *Railway Express Agency, Inc.* v. *Virginia*, 358 U. S. 434 (1959); the orders were not channeled through an instate place of business at which some intrastate commerce was being done, so as to invoke the "vortex" rule of *Norton Co.* v. *Department of Revenue of Illinois*, 340 U. S. 534 (1951); the taxpayer was not participating in the business of its customers by soliciting intrastate orders from their customers, as in the *Northwestern Consolidated Milling Co.* portion of *Cheney Bros. Co.* v. *Massachusetts, supra* at 155; nor was there even the substantial instate place of business whose activity was apparently decisive in *Field Enterprises, Inc.* v. *Washington*, 352 U. S. 806 (1956), *aff'g. per curiam*, 47 Wash. 2d 852, 289 P. 2d 1010 (1955).

The Multiple Burdens Test.

Measured against the "multiple burdens" standard, the tax should also have been held invalid. The Washington Court, in arriving at its conclusion that no double or multiple taxation of the same gross income was possible here, made only one comparison, viz., the tax in Washing-

ton on gross receipts from wholesale selling *vis-a-vis* gross receipts taxes levied elsewhere for the privilege of manufacturing the goods sold. Even on the basis of this comparison there was an actual double burden, since the same unapportioned gross receipts served as the measure of both taxes. It is no answer to this to say, as the Court below did, that the taxes were levied on two different privileges.

But more important is the Washington Court's omission to discuss the obvious and indisputable multiple burden involved if this same tax on the privilege of engaging in the business activities of *wholesale selling* is imposed by other states. If the rationale of the Washington Court's decision were upheld, an identical tax could be levied, without apportionment, on the same gross receipts from this wholesale selling by every State in which any activity connected with such sales might occur. Oregon's right to impose such a tax would be undeniable, since the sales orders were taken and accepted at a place of business there. Other States such as California, Michigan and Missouri had contacts equally substantial, and in fact greater than the State of Washington.

Due Process Considerations.

Due process requires some definite link, some minimum connection, between a state and a person, property or transaction it seeks to tax. *Miller Bros Co.* v. *Maryland*, 347 U. S. 340 (1954). The holding of the Supreme Court of Washington is that an unapportioned tax measured by gross receipts may be exacted from an out-of-state vendor for the privilege of having customers in the state, advising the customers in the conduct of their business and providing national advertising developed and placed without the state. Thus, the Court finds that the having of customers

within the state results in an obligation to the state; yet no protection or benefits are given to the out-of-state vendor by the state merely by reason of the fact that residents of the state purchase its products. It is a violation of due process for a state to tax transactions beyond its borders, or to impose a tax the measure of which does not bear a reasonable relationship to protection and benefits conferred by the state on intrastate activities which give rise to the tax. *Hans Rees Sons, Inc.* v. *North Carolina*, 283 U. S. 123.

The Need for Clarification by this Court.

Whether this tax is judged by the classic legal test of the directness of its burden on (and consequent regulation of) interstate commerce, or by the "practical" or economic test of whether it exposes interstate commerce to multiple burdens which would not be borne if the same commerce were conducted wholly within the borders of one State, it should have been declared invalid as here applied. In upholding its validity, the Washington Court adopted a new construction of the Commerce Clause, and while that construction is unclear, it unquestionably conflicts with the construction which this Court has put on the Commerce Clause in hundreds of carefully considered opinions.

The Washington Court purported to find justification for its position in this Court's *per curiam* affirmance in *Field Enterprises, Inc.* v. *Washington, supra.* In that case this same tax was sustained as applied to interstate selling through a substantial sales office within the State of Washington. There orders were solicited and orders and down payments were received and forwarded to an outstate point at which they were accepted, and from which the goods were shipped. This Court's *per curiam* in that case, citing only *Norton Co.* v. *Department of Revenue, supra,* cannot

be reconciled with the principles laid down in *Spector, supra; Cheney Bros. Co.* v. *Massachusetts,* 246 U. S. 147 (1918); *Alpha Portland Cement* v. *Massachusetts,* 268 U. S. 203 (1925). Mr. Justice Harlan's clarifying concurring opinion in *Northwestern States Portland Cement Co.* v. *Minnesota, supra,* at 467-468, excludes reconciliation on the basis that the sales office in *Field Enterprises* was engaged to some extent in intrastate commerce.

As a result of this conflict and uncertainty, a situation has developed strikingly similar to that which existed between the time this Court delivered its *per curiam* affirmance in *West Publishing Co.* v. *McColgan,* 328 U. S. 823 (1946) and the explanation of that affirmance in *Northwestern States Portland Cement Co.* v. *Minnesota, supra* (1959). During that period of conflict and uncertainty, state tax administrators pushed their interpretation of the *West Publishing* affirmance to the limits shown in *International Shoe Co.* v. *Fontenot,* 236 La. 279, 107 So. 2d 640 (1959), *cert. denied,* 359 U. S. 984 (1959), from which Congress had to call them back by the passage of Public Law 86-272, 73 Stat. 555 (1959), 15 U. S. C. §381 *et seq.*

The present conflict and uncertainty over the meaning of the *per curiam* in *Field Enterprises* has created the result demonstrated in this case, where we find the State pressing well beyond the fact situation in the *Field* case. The extent of the State's attempted grasp here is highlighted by the fact that, under Public Law 86-272, *supra,* the activities which the Washington Court held sufficient to support this gross income tax would be insufficient as a jurisdictional nexus to sustain a *net* income tax.

If Washington is not restrained in this endeavor, the States of West Virginia and Indiana can be expected to adopt a similar policy in the enforcement of their low-rate gross receipts taxes.

More important, paralleling developments following the *Northwestern States Portland Cement* case, other States can be expected to enact copies of Washington's tax. It should also be borne in mind that this low-rate gross receipts tax is popular with municipalities and if the Washington tax is sustained there is the prospect that additional municipalities will impose such a tax on all deliveries within their jurisdictions.

In these circumstances it is of extreme public importance for this Court to clarify and restate the principles which govern the application, in this area, of gross receipts taxes to interstate commerce.

Conclusion.

It is respectfully submitted that the issues presented by this appeal involve a substantial Federal Constitutional question. This *amicus curiae* therefore urges the Court to note probable jurisdiction.

HARRY G. MASON,
1 Summer Avenue,
Newark 4, N. J.

WALTER H. BEAMAN,
570 Lexington Avenue,
New York 22, N. Y.
Attorneys for *Amicus Curiae.*

LIBRARY
SUPREME COURT, U. S.

MOTION FILED MAY 3 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
and
BRIEF OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., AS AMICUS CURIAE

LOUIS F. DAHLING
RICHARD D. ROHR
1400 Buhl Building
Detroit 26, Michigan
Counsel for Automobile Manufacturers Association, Inc.

Of Counsel:
CHARLES F. HOSMER
BODMAN, LONGLEY, BOGLE, ARMSTRONG & DAHLING.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.....

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Automobile Manufacturers Association, Inc., respectfully moves this court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the appellant herein has been obtained, but the attorney for the appellee herein refused to consent to the filing of a brief by Automobile Manufacturers Association, Inc., as *amicus curiae*.

The applicant, Automobile Manufacturers Association, Inc., a non-profit trade association whose members manu-

facture and sell automotive vehicles in the United States, has an interest in this case in that several of its members have been assessed a tax on wholesaling activities by the State of Washington. The assessed tax on these members is not being paid pending a final decision of the instant case, because their liability depends on a determination of the questions which are presented for decision in the instant case, namely, those set forth in appellant's Jurisdictional Statement.

Automobile Manufacturers Association, Inc., believes that appellant herein will be unable to give a full presentation of facts in the instant case. The Automobile Manufacturers Association, Inc., is in possession of factual information relating to the impact of the challenged tax on the automobile industry. This information cannot be presented by appellant, and it will be unknown to the Court unless presented by Automobile Manufacturers Association, Inc., as *amicus curiae*. It is desirable that the Court have these facts before them in considering the Jurisdictional Statement filed herein by appellant, because these facts demonstrate in part the scope of the issues and their importance both in the State of Washington and nationally.

Respectfully submitted,

LOUIS F. DAHLING
1400 Buhl Building
Detroit 26, Michigan

RICHARD D. ROHR
1400 Buhl Building
Detroit 26, Michigan
Counsel for Automobile Manufacturers Association, Inc.

Of Counsel:
CHARLES F. HOSMER
BODMAN, LONGLEY, BOGLE,
ARMSTRONG & DAHLING.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.....

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., AS AMICUS CURIAE

THE ISSUE

The issue in this case is whether the State of Washington has applied its tax on wholesaling activities in a manner which violates the Commerce Clause (Art. 1, §8, cl. 3) and the Due Process Clause (Amend. XIV, §1) of the United States Constitution. The Supreme Court of Washington has held, in essence, that the tax may be applied on the

privilege of having customers within Washington. The *amicus curiae* believes that the Court did not properly consider that the tax is imposed on interstate sales, causes multiple taxation, and discriminates in favor of industry within the state.

INTEREST OF AMICUS CURIAE

Automobile Manufacturers Association, Inc., is a non-profit membership corporation organized under the laws of New York. The Association is composed of thirteen members, who are the manufacturers of well over 90% of all passenger automobiles, trucks, and busses produced in the United States. The members are:

> American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Divco Truck Division of Divco-Wayne Corporation, Duplex Division of Warner and Swasey Company, Ford Motor Company, General Motors Corporation, International Harvester Company, Kaiser Jeep Corporation, Mack Trucks, Inc., Studebaker Corporation, Walter Motor Truck Company, and White Motor Company.

The members of the Association are of varying size; however, all engage in sales in interstate commerce. Most sell their products nationally, including sales to dealers within the State of Washington. These companies do not have offices in every state; some do not have an office in Washington; no member has a manufacturing plant in Washington. Nevertheless, in order to meet the keen competition in the industry, these members must maintain personal contact with the dealers to whom they wholesale their products. They also must create a retail demand for their

products through national advertising media such as magazines, radio, and television.

Because of the nature of their activities, some members have been assessed the Washington wholesaler's tax on sales which they and the Association believe to have been in interstate commerce. If other states or local units of government were to enact and enforce tax laws in the same manner that Washington has, then all members would be exposed to tax on their interstate sales. There is also the likelihood of several states taxing the same interstate sale. The *amicus curiae* is vitally interested in ascertaining whether states have the power to tax in the manner that the State of Washington has taxed General Motors. The final decision in this case will affect the welfare of the automobile industry and all other industries engaged in interstate commerce. It is for this reason the Association believes that that final decision should be made by the Supreme Court of the United States, rather than by the Supreme Court of Washington.

IMPORTANCE OF THE DECISION IN THIS CASE

The final decision in this case will be of importance for two reasons. First, if the decision of the Supreme Court of Washington stands, it will make serious inroads on the right of merchandise to flow in interstate commerce without interference from the separate states. Second, if the decision stands, the business of the members of the *amicus curiae* will be seriously affected. This latter proposition will be discussed in this section, the former in the succeeding section.

Some members of the *amicus curiae* do not have an office within the State of Washington. Others during some periods in the last decade have not had an office within Washington.

Yet during these years Washington has assessed the disputed tax on these members' wholesaling activities, which were unrelated to an office within the state. Present assessments are now in excess of $1,200,000.00. With the tax assessments projected through December 31, 1962, the members will be liable for total sums in excess of $4,400,000.00. The taxes assessed and to be assessed directly affect the business of the members of the *amicus curiae* because they will have to absorb the tax, since the transactions involved have been completed. It is now impossible for the tax to be passed on to the members' customers even if that were legally permissible in the face of §82.04.500, Rev. Code Wash. It is the belief of the *amicus curiae* that these are proceeds from interstate commerce.

The magnitude of these sums which may have to be paid to the State of Washington indicates the immediate impact which the final decision in this case will have. However, the ultimate effect of a decision is far more significant.

Data for 1962 (or for the most recent fiscal year of a member) show that the members of the *amicus curiae* have annual gross receipts in excess of $22,500,000,000.00. Most members have customers in every state, but in many of the fifty states, one or more of these members have no office, plant, or other place of business. If in each such state these members had to pay a wholesale tax similar to the disputed tax, then the multitude of such taxes (at both state and local levels), coupled with taxes imposed on the same gross receipts by the states in which the products are manufactured, would subject interstate commerce to an unbearable burden.

For these reasons, the questions in this case present issues of so broad a scope and of such national importance that they must one day be decided by the Supreme Court

of the United States. It is the belief of *amicus curiae* that the issues are presently of such consequence that the Supreme Court should not defer its decision of these questions.

ARGUMENT

Under the Articles of Confederation each state could regulate foreign, interstate, and intrastate commerce. Because of this power, states enacted laws laying tariffs on goods coming from sister states. See, *e.g.*, N. Y. Laws 1787, ch. 81; N. Y. Laws 1785, ch. 7. The Commerce Clause of the Constitution was designed to bring an end to state control of foreign and interstate commerce. THE FEDERALIST, No. 42 (Madison).

The states were left with the right to regulate intrastate commerce and, therefore, the right to tax it. The states also have the power to regulate local incidents of interstate commerce. The *amicus curiae* believes that the Washington tax challenged in this case goes beyond that power, that the tax is equivalent to a tariff forbidden by the United States Constituton.

Since the tax involved here is on the privilege of making sales at wholesale, the Supreme Court of Washington, by finding appellant liable, decided that the sales took place within Washington. This determination was justified by pointing to the activities of appellant's agents within the state and to the presence of appellant's customers in the state. The tax is on unapportioned gross receipts, and no credit is given for taxes paid in other states. However, the court disregarded the possibility of multiple taxation.

Taxes in other states were distinguished because they were on the privilege of manufacturing rather than the privilege of wholesaling.

The court did not discuss the possibility of double taxation on wholesaling activities, but that possibility does exist. Appellant had a sales office in Portland, Oregon. At these, and other offices outside the state, orders were accepted and deliveries were made. These activities have traditionally fixed the point of "sale." If Oregon enacted a tax on sales at wholesale, then it could collect that tax from the "sales" at Portland. In cases where the sales involved Washington dealers, the conclusions would be: (1) Appellant would have to pay taxes to two states on the same sale. (2) Since both taxes would be applicable, the sale must have occurred in both states. The second conclusion offends logic; both conclusions offend the Commerce Clause.

Nor does the *amicus curiae* agree with the Supreme Court of Washington that wholesaling is an incident of business distinct from manufacturing. Appellant only manufactures goods to sell them. One activity cannot exist without the other. The Washington legislature recognized this when it provided that a Washington manufacturer did not have to pay both a manufacturer's tax and a wholesaler's tax. Rev. Code Wash. §82.04.440. It can thus be seen that not only could appellant be liable for two or more taxes on the same wholesaling activity, but also an additional tax on manufacturing the product involved. These unapportioned taxes are all in effect taxes on the privilege of having gross receipts.

This case presents additional questions whether the tax discriminates in favor of Washington manufacturers in

violation of the Commerce Clause and whether it violates the Due Process Clause.

These questions of substantial constitutional importance require the answer of the Supreme Court of the United States so that both industry and state courts can be certain of the extent of state taxing power.

CONCLUSION

This appeal ostensibly involves only the tax enforced by the State of Washington. But if that tax remains unchallenged, forty-nine other states, and innumerable local units with power to tax, are at liberty to erect their own trade barriers. This eruption of taxes would bury interstate commerce. Fifty states could act as independent nations in preserving their home industry.

When James Madison in THE FEDERALIST, No. 42, urged the necessity of the Commerce Clause, he pointed out that other federations (Switzerland and the Holy Roman Empire) forbade duties on commerce between member states. The present era is not devoid of apt analogies. In Europe the Common Market has been created to assist the free flow of commerce. Similar free-trade agreements have been suggested for other parts of the world.

The free flow of commerce has proved a vital force in this nation's economy. Certainly against the background of world progress in establishing free trade areas, the United States must preserve the integrity of the Commerce Clause of its Constitution. The Supreme Court,

the proper forum for that preservation, should accept the appeal in this case.

Respectfully submitted,

LOUIS F. DAHLING
1400 Buhl Building
Detroit 26, Michigan

RICHARD D. ROHR
1400 Buhl Building
Detroit 26, Michigan
Counsel for Automobile Manufacturers Association, Inc.

Of Counsel:
CHARLES F. HOSMER
BODMAN, LONGLEY, BOGLE,
ARMSTRONG & DAHLING

Dated: May 2, 1963.

LIBRARY
SUPREME COURT, U.S.
MOTION FILED MAY 3 1963

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 115

GENERAL MOTORS CORPORATION,
Appellant,

v.

STATE OF WASHINGTON, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

MOTION OF MAGAZINE PUBLISHERS ASSOCIATION, INC. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

AND

BRIEF OF MAGAZINE PUBLISHERS ASSOCIATION, INC. AS *AMICUS CURIAE*

RICHARD JOYCE SMITH,
Counsel for
MAGAZINE PUBLISHERS ASSOCIATION, INC.,
as *Amicus Curiae.*

E. KENDALL GILLETT, JR.,
ANSLEY KIME,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION,

Appellant,

v.

STATE OF WASHINGTON, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

MOTION OF MAGAZINE PUBLISHERS ASSOCIATION, INC. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Magazine Publishers Association, Inc. respectfully moves this Court for leave to file the accompanying brief in this appeal as *amicus curiae*. The consent of the attorney for the Appellant herein has been obtained, but the attorney for the Appellees refused to consent to the filing of a brief by Magazine Publishers Association, Inc. or any other person as *amicus curiae*.

The applicant, Magazine Publishers Association, Inc., has an interest in this case because its members are exposed to the Washington Business and Occupation Tax statute involved in the decision below. They, like the affected Divisions of General Motors Corporation, maintain no establishments or places of business in Washington but sell products and services which are delivered into the State of Washington solely in interstate commerce and, if the de-

cision below stands, may be subject to the burden of the Washington tax. Because of the characteristics of the magazine publishing business and the interpretation of Article I, Section 8, Clause 3 (the Commerce Clause) of and the Fourteenth Amendment (Due Process Clause) to the United States Constitution concerning that business found in *Western Livestock* v. *Bureau of Revenue*, 303 U. S. 250, 82 L. ed. 823 (1938), and subsequent characterizations of that case, the burden of the assailed tax upon magazine publishers probably will not be covered by the briefs of the parties to this appeal. The questions presented by this appeal are constitutionally substantial and, we believe, of great public importance.

RICHARD JOYCE SMITH,
Counsel for
MAGAZINE PUBLISHERS ASSOCIATION, INC.
as *Amicus Curiae*,
522 Fifth Avenue,
New York 36, N. Y.

E. KENDALL GILLETT, JR.,
ANSLEY KIME,
Of Counsel.

INDEX TO BRIEF

	PAGE
STATEMENT OF THE CASE	1
INTEREST OF THE *Amicus Curiae*	1
SUMMARY OF ISSUES	3
ARGUMENT:	
An unapportioned gross receipts tax levied for the privilege of making sales purely in interstate commerce, unrelated to any other business or activity in the taxing jurisdiction, imposes an unconstitutional burden and condition upon interstate commerce and by virtue of its extra-territorial effect denies interstate sellers due process of law	4
CONCLUSION	17

CITATIONS

Almy v. *State of California*, 12 How. 65 U. S. 169, 16 L. ed. 644 (1861)	5
Alpha Portland Cement Company v. *Massachusetts*, 268 U. S. 203, 69 L. ed. 916 (1925)	12
Anglo-Chilean Nitrate Sales Corporation v. *Alabama*, 288 U. S. 218, 77 L. ed. 710 (1933)	5, 12
Atlantic Coastline v. *Dawton*, 262 U. S. 413, 67 L. ed. 1051 (1923)	8
Barrett v. *City of New York*, 232 U. S. 14, 58 L. ed. 483 (1914)	11
Best & Company, Inc. v. *Maxwell*, 311 U. S. 454, 85 L. ed. 275 (1940)	12

	PAGE
B. F. Goodrich v. *State of Washington*, 38 Wash. 2d 663, 231 P. 2d 325 (1951), cert. den. 342 U. S. 876, 96 L. ed. 659 (1951)	16
Board of Trade v. *Olsen*, 262 U. S. 1, 36, 67 L. ed. 839, 850 (1922)	10
Brennan v. *Titusville*, 153 U. S. 289, 38 L. ed. 719 (1894)	11
Brown v. *Maryland*, 25 U. S., 12 Wheat, 419, 429, 6 L. ed. 678, 682 (1827)	5
Cheney Brothers Company v. *Massachusetts*, 246 U. S. 147, 62 L. ed. 632 (1918)	12
Connecticut General Life Insurance Co. v. *Johnson*, 303 U. S. 77, 82 L. ed. 673 (1938)	14
Cook v. *Pennsylvania*, 97 U. S. 566, 24 L. ed. 1015 (1878)	5
Cooney v. *Mountain States Telephone and Telegraph Company*, 294 U. S. 384, 79 L. ed. 934 (1934)	14
Crew Levick v. *Commonwealth of Pennsylvania*, 245 U. S. 292, 62 L. ed. 295 (1917)	5
Crutcher v. *Kentucky*, 141 U. S. 47, 35 L. ed. 649 (1891)	5, 11
Danke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282, 66 L. ed. 239 (1921)	17
Fargo v. *Michigan*, 121 U. S. 230, 30 L. ed. 888 (1887)	5
Field Enterprises, Inc. v. *Washington*, 352 U. S. 806, 1 L. ed. 2d 39 (1956)	7
Fishers Blend Station, Inc. v. *State Tax Commission, et al.*, 297 U. S. 650, 80 L. ed. 961 (1936)	5
Freeman v. *Hewit*, 329 U. S. 249, 91 L. ed. 265 (1946)	5, 6, 8
Galveston and Harrisburg Railway v. *Texas*, 210 U. S. 217, 52 L. ed. 1031 (1908)	5, 14
Gwin, White & Prince v. *Henneford*, 305 U. S. 434, 83 L. ed. 272 (1939)	5, 16

PAGE

Hans Rees' Sons v. *North Carolina*, 283 U. S. 123, 75 L. ed. 879 (1931) 14
Heyman v. *Hays*, 236 U. S. 178, 59 L. ed. 527 (1915) .. 11

International Harvester Co. v. *Department of Treasury*, 322 U. S. 340, 88 L. ed. 1313 (1944) 7
International Paper Company v. *Massachusetts*, 246 U. S. 135 L. ed. (1918) 11; 12
International Textbook Co. v. *Pigg*, 217 U. S. 91, 54 L. ed. 678 (1910) 11
Interstate Oil Pipe Line Co. v. *Stone*, 337 U. S. 662, 93 L. ed. 1613 (1949) 14, 15

James v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. ed. 155 (1937) 5, 13
J. D. Adams Mfg. Co. v. *Storen*, 304 U. S. 307, 311, 82 L. ed. 1365, 1369 (1938) 5, 12, 13
Joseph v. *Carter and Weeks Stevedoring Co.*, 330 U. S. 422, 91 L. ed. 998 (1946) 5, 16

Leloup v. *Port of Mobile*, 127 U. S. 640, 32 L. ed. 311 (1888) 11
Looney v. *Crane Co.*, 245 U. S. 178, 62 L. ed. 230 (1917) 11

McCall v. *California*, 136 U. S. 104, 34 L. ed. 391 (1890) 5, 11
McLeod v. *J. E. Dilworth Co.*, 322 U. S. 327, 88 L. ed. 1304 (1944) 5
Memphis Steam Laundry Co. v. *Stone*, 342 U. S. 389, 96 L. ed. 436 (1952) 12, 16
Meyer, Auditor of the State of Oklahoma v. *Wells-Fargo and Company*, 223 U. S. 298, 56 L. ed. 445 (1912) 5
Michigan-Wisconsin Pipeline Co. v. *Calvert*, 347 U. S. 157, 98 L. ed. 583 (1954) 16
Minnesota Rate Cases, 230 U. S. 352, 400, 57 L. ed. 1511, 1541 (1912) 5

PAGE

Moran v. *New Orleans*, 112 U. S. 69, 28 L. ed. 653 (1884) 11

New Jersey Bell Telephone Company v. *State Board of Taxes and Assessments of New Jersey*, 280 U. S. 338, 74 L. ed. 463 (1930) 5

New York, Lake Erie & Western Railroad Co. v. *Pennsylvania*, 158 U. S. 431, 39 L. ed. 1043 (1895) .. 5

Nippert v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760 (1946) 9, 12, 16, 17

Norfolk & Western Railroad v. *Sims*, 191 U. S. 441, 48 L. ed. 254 (1903) 11

Northwestern States Portland Cement Co. v. *Minnesota (Williams* v. *Stockham Valves and Fittings, Inc.)*, 358 U. S. 450, 3 L. ed. 2d 421 (1949) 7, 8, 10, 16

Norton v. *Department of Revenue of Illinois*, 340 U. S. 534, 95 L. ed. 517 (1951) 6, 7

Oklahoma v. *Wells Fargo*, 223 U. S. 298, 302, 56 L. ed. 445, 448 (1912) 13

Ozark Pipeline Corp. v. *Monier*, 266 U. S. 555, 69 L. ed. 439 (1925) 12

Pacific Telephone Company v. *Tax Commission*, 297 U. S. 403, 80 L. ed. 761 (1936) 5

Passenger Cases, 7 How., 48 U. S. 281, 12 L. ed. 702 (1849) 5

Peck v. *Low*, 247 U. S. 165, 62 L. ed. 1049 (1918) 7

Philadelphia & Reading Railroad Co. v. *Commonwealth of Pennsylvania (State Tax on Railway Gross Receipts)*, 15 Wal. 82 U. S. 232, 21 L. ed. 146 (1873) 5

Philadelphia and Southern Mail Steamship Company v. *Pennsylvania*, 122 U. S. 326, 30 L. ed. 1200 (1887) 5

Pickard v. *Pullman Co.*, 117 U. S. 34, 29 L. ed. 785 (1885) 5

Puget Sound Stevedoring Co. v. *Tax Commission*, 302 U. S. 90, 82 L. ed. 69 (1937) 5

PAGE

Railway Express Agency, Inc. v. *Commonwealth of Virginia*, 347 U. S. 359, 98 L. ed. 757 (1954) 5

Ratterman v. *Western Union Telegraph Co.*, 127 U. S. 411, 32 L. ed. 229 (1888) 5, 6

Real Silk Hosiery Mills v. *Portland*, 268 U. S. 325, 69 L. ed. 982 (1925) 12

Rearick v. *Pennsylvania*, 203 U. S. 507, 51 L. ed. 295 (1906) 11

Robbins v. *Shelby County Taxing District*, 120 U. S. 489, 30 L. ed. 694 (1887) 11

Shaeffer v. *Carter*, 252 U. S. 37, 64 L. ed. 445 (1920) 8

Sonneborn Bros. v. *Cureton (Keeling)*, 262 U. S. 506, 67 L. ed. 1095 (1923) 5

South Eastern Underwriters Ass'n, 322 U. S. 533, 547, 88 L. ed. 1440, 1454 9

Spector Motor Service, Inc. v. *O'Connor*, 181 F. 2d 150, 153 (2d Cir. 1950) 15

Spector Motor Service, Inc. v. *O'Connor*, 340 U. S. 602 610, 95 L. ed. 573, 579 (1951) 12, 15

Spector Motor Service, Inc. v. *Walsh*, 139 F. 2d 809, 814 (2d Cir. 1944) 15

State Tax Commission v. *Interstate Natural Gas Co.*, 284 U. S. 41, 76 L. ed. 156 (1931) 12

Stockard v. *Morgan*, 185 U. S. 27, 46 L. ed. 785 (1902) 11

Telegraph Co. v. *Texas*, 105 U. S. 460, 26 L. ed. 1067 (1882) 5

The Glouster Ferry Co. v. *Pennsylvania*, 114 U. S. 196, 29 L. ed. 158 (1885) 5

United States v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533, 88 L. ed. 1440 (1944) 9

United States Glue Co., Town of Oak Creek, 247 U. S. 321, 62 L. ed. 1135 (1918) 8

PAGE

Wallace v. *Hines*, 253 U. S. 66, 69, 64 L. ed. 782, 784 (1920) 14
Webber v. *Virginia*, 103 U. S. 344, 26 L. ed. 565 (1881) 11
Welton v. *Missouri*, 91 U. S. 275, 23 L. ed. 347 (1876) 5
Western Live Stock v. *Bureau of Revenue*, 303 U. S. 250, 82 L. ed. 823 (1938) 15, 16, 17
Western Oil Refining Co. v. *Lipscomb*, 244 U. S. 346, 61 L. ed. 1181 (1917) 11
Western Union Telegraph Company v. *Pennsylvania*, 128 U. S. 39, 32 L. ed. 345 (1888) 5

STATUTES

Revised Code of Washington, Section 82.04.220 ... 11
Revised Code of Washington, Section 82.04.250 ... 2
Revised Code of Washington, Section 82.04.270 ... 2
Revised Code of Washington, Section 82.04.280 ... 3
Public Act 86-272 ..... 8, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

GENERAL MOTORS CORPORATION,
Appellant,

v.

STATE OF WASHINGTON, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

BRIEF OF MAGAZINE PUBLISHERS ASSOCIATION, INC. AS *AMICUS CURIAE*

Statement of the Case

Magazine Publishers Association, Inc. accepts and adopts the statement of the case set forth in the Appellant's jurisdictional statement. Publishers who are members of this association maintain no establishments whatever within Washington and, like the Appellant, conduct no business activities in that state except those related to sales that entail delivery into Washington purely in interstate commerce.

Interest of the *Amicus Curiae*

The *amicus curiae*, Magazine Publishers Association, Inc. is a trade association, the membership of which includes the publishers of practically all well-known magazines of national circulation. Its membership consists of

about 100 publishers of some 275 nationally known and distributed magazines and periodical publications, having a combined circulation of approximately 160,000,000 copies per issue. These include general circulation magazines which are purchased and read by the public in every one of the fifty states and abroad. Members of the Association also publish other nationally known magazines, such as business, farm, religious, scientific, literary, and special interest periodicals, which have extensive circulation to particular readers and in areas where they are of interest.

The publishers provide a complex system of distribution whereby general circulation magazines are delivered on their respective issue dates simultaneously in every city, town and hamlet in the country. In addition to other content, the magazines contain advertisements, disseminated as a service to advertisers. Magazines are sold either as single copies or by subscription for varying terms. Advertising service is sold advertisers at contract rates.

Approximately 73% of the 160,000,000 copies per issue are sold by subscription, delivered directly by mail from the publisher to the subscriber. In this respect the publishers, unlike the Appellant, make "sales at retail" as defined in the Washington statute. . . .

The balance, or approximately 27% of the copies are distributed to wholesalers who in turn distribute them to retailers for single copy newsstand sale. In this respect the publishers are "wholesale distributors" as defined in the Washington statute.

Sections 82.04.250 and 82.04.270, respectively, of the Revised Code of Washington impose the tax on persons making sales at "retail" and at "wholesale".

Both methods, retail and wholesale, involve thousands (or even millions) of individual interstate shipments by a publisher, by United States mail or other carrier, a percentage of which find their way into Washington.

The Washington statute (§ 82.04.280) also purports to impose a like tax on "every person engaging within this state in the business of: (1) Printing, and publishing newspapers, periodicals or magazines." However, since none of the nationally circulated magazines of the association's members are printed or published in Washington, only the taxes on "retailers" or "wholesale distributors" could be considered to apply to them.

While thus defined as "retailers" and "wholesale distributors" under the Washington act, neither the association's members nor any agents of those members do anything in Washington in connection with sales except promotion or solicitation and supervision of sales in interstate commerce.

Summary of Issues

Four basic questions in this case are raised in the light of the magazine publishing business, namely:

(1) Is Washington's unapportioned gross receipts tax, exacted from sales delivered into that State, repugnant to the Commerce Clause of the United States Constitution when applied to a foreign corporation conducting no business in the State other than sales purely in interstate commerce?

(2) Is Washington's unapportioned gross receipts tax, laid on the privilege of selling and delivering goods and services within the State, repugnant to the Commerce Clause when applied to an out-of-state magazine publisher?

(3) Is a Washington tax measured by unapportioned gross receipts which exempts local manufacturers who pay a tax only as sellers an invalid discrimination against interstate sellers required to pay tax at the same rate?

(4) Is Washington's unapportioned gross receipts tax, levied for the privilege of engaging in business within the

State, repugnant to the Due Process Clause of the Fourteenth Amendment to and the Commerce Clause of the United States Constitution when applied to sales accepted and fulfilled wholly outside that State but made to customers located within that State, when the seller's only activities within the State consist of promotion or solicitation and supervision of sales in interstate commerce and the seller has no local establishment of any kind within the State for handling such sales or for any other purpose?

ARGUMENT

An unapportioned gross receipts tax levied for the privilege of making sales purely in interstate commerce, unrelated to any other business or activity in the taxing jurisdiction, imposes an unconstitutional burden and condition upon interstate commerce and by virtue of its extraterritorial effect denies interstate sellers due process of law.

First—the Washington tax is levied upon the entire gross receipts derived from sales in interstate commerce. The putative taxpayer engages in no local commerce incident to the disputed tax and there is no question present of mingling an interstate business with a local business and thus no want of proof that the receipts sought to be taxed are solely and exclusively derived from interstate commerce.

The decision below of the Supreme Court of Washington concludes that the tax complies with constitutional requirements because that Court finds, erroneously we believe, that the tax meets two tests: (1) "the discrimination test", and (2) "the multiple burden test." While state taxes have been invalidated on both grounds, these surely are not the sole "tests".

A long line of decisions extending well over a century have proscribed taxes such as this, levied by states upon the entire volume of gross receipts from interstate sales, be-

cause such taxes constitute a barrier to the free flow of commerce among the states.[1]

The law was summarized by the Court as long ago as *Ratterman* v. *Western Union Telegraph Co.*, 127 U. S.

[1] *Brown* v. *Maryland*, 25 U. S., 12 Wheat. 419, 429, 6 L. ed. 678, 682 (1827); *Passenger* cases, 7 How. 48 U. S. 281, 12 L. ed. 702 (1849); *Almy* v. *State of California*, 12 How. 65 U. S. 169, 16 L. ed. 644 (1861), as applied in *Philadelphia & Reading Railroad Co.* v. *Commonwealth of Pennsylvania (State Tax on Railway Gross Receipts)*, 15 Wal. 82 U. S. 232, 21 L. ed. 146 (1873); *Welton* v. *Missouri*, 91 U. S. 275, 23 L. ed. 347 (1876); *Cook* v. *Pennsylvania*, 97 U. S. 566, 24 L. ed. 1015 (1878); *Telegraph Co.* v. *Texas*, 105 U. S. 460, 26 L. ed. 1067 (1882); *The Glouster Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 29 L. ed. 158 (1885); *Pickard* v. *Pullman Co.*, 117 U. S. 34, 29 L. ed. 785 (1885); *Fargo* v. *Michigan*, 121 U. S. 230, 30 L. ed. 888 (1887); *Philadelphia and Southern Mail Steamship Company* v. *Pennsylvania*, 122 U. S. 326, 30 L. ed. 1200 (1887); *Western Union Telegraph Company* v. *Pennsylvania*, 128 U. S. 39, 32 L. ed. 345 (1888); *McCall* v. *California*, 136 U. S. 104, 34 L. ed. 392 (1890); *Crutcher* v. *Kentucky*, 141 U. S. 47, 35 L. ed. 649 (1891); *New York, Lake Erie & Western Railroad Co.* v. *Pennsylvania*, 158 U. S. 431, 39 L. ed. 1043 (1895); *Galveston Harrisburg, etc. Railway Co.* v. *State of Texas*, 210 U. S. 217, 52 L. ed. 1031 (1908); *Meyer, Auditor of the State of Oklahoma* v. *Wells Fargo and Company*, 223 U. S. 298, 56 L. ed. 445 (1912); *Minnesota Rate Cases*, 230 U. S. 352, 400, 57 L. ed. 1511, 1541 (1912); *Crew Levick* v. *Commonwealth of Pennsylvania*, 245 U. S. 292, 62 L. ed. 295 (1917); *Sonneborn Bros.* v. *Cureton (Keeling)*, 262 U. S. 506, 67 L. ed. 1095 (1923); *New Jersey Bell Telephone Company* v. *State Board of Taxes and Assessments of New Jersey*, 280 U. S. 338, 74 L. ed. 463 (1930); *Anglo-Chilean Nitrate Sales Corporation* v. *Alabama*, 288 U. S. 218, 77 L. ed. 710 (1933); *Pacific Telephone Company* v. *Tax Commission*, 297 U. S. 403, 80 L. ed. 761 (1936); *Fishers Blend Station, Inc.* v. *State Tax Commission, et al.*, 297 U. S. 650, 80 L. ed. 961 (1936); *Puget Sound Stevedoring Co.* v. *Tax Commission*, 302 U. S. 90, 82 L. ed. 69 (1937); *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. ed. 155 (1937); *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 82 L. ed. 1365 (1938); *Gwin, White & Prince* v. *Henneford*, 305 U. S. 434, 83 L. ed. 272 (1939); *McLeod* v. *J. E. Dilworth Co.*, 322 U. S. 327, 88 L. ed. 1304 (1944); *Freeman* v. *Hewit*, 329 U. S. 249, 91 L. ed. 265 (1946); *Joseph* v. *Carter & Weeks Stevedoring Co.*, 330 U. S. 422, 91 L. ed. 998 (1946); *Railway Express Agency, Inc.* v. *Commonwealth of Virginia*, 347 U. S. 359, 98 L. ed. 757 (1954).

411, 32 L. ed. 229 (1888) where the Court stated (127 U. S. 411, 428):

> "Under these views, we answer the question, in regard to which the judges of the Circuit Court divided in opinion, by saying that a single tax assessed * * * upon the receipts * * * which were derived partly from interstate commerce and partly from commerce within the State, but which were returned and assessed in gross and without separation or *apportionment*, is *not* wholly invalid, but is invalid only in proportion to the extent that such receipts were derived from interstate commerce." [Emphasis supplied]

Since all of the receipts in the case at bar were derived solely from interstate commerce, the tax cannot properly be applied to them.

The Court has stated regarding a gross receipts tax:

> "Nor is there any warrant in the constitutional principles heretofore applied by this Court to support the notion that a State may be allowed one single-tax-worth of direct interference with the free flow of commerce. An exaction by a State from interstate commerce falls not because of a proven increase in the cost of the product. What makes the tax invalid is the fact that there is interference by a State with the freedom of interstate commerce." (*Freeman* v. *Hewit*, 329 U. S. 249, 256-7, 91 L. ed. 265, 274)

Norton v. *Department of Revenue of Illinois*, 340 U. S. 534, 95 L. ed. 517 (1951) does not overrule any of the foregoing cases. *Norton* held that sales in interstate commerce—in that case mail order sales—were immune from the reach of an Illinois gross receipts tax. The only real question in *Norton* arose because the seller there maintained a place of business where local retail sales were made from stock and, it appeared, also "channeled" other sales requiring delivery from outside the State through its local store, and, since there was lack of proof as to

what sales were local and what interstate, the case was remanded (Cf., *International Harvester Co.* v. *Department of Treasury*, 322 U. S. 340, 88 L. ed. 1313 (1944)).

In the case at bar there is no local establishment and, thus, no confusion or question of proof of a distinction between intrastate and interstate sales. All of the sales here taxed are clearly and exclusively interstate.

The decision below is premised entirely upon the finding that "business activities having a relation to wholesale sales are conducted in Washington"; but those wholesale sales were interstate commerce and the related "business activities" were in furtherance of and an integral part of that commerce.

Despite the numerous opinions of the Court pertinent to this case, the Washington Supreme Court based its decision upon two decisions of the Court, neither of which is in point, namely that part of, *Norton Company* v. *Department of Revenue of Illinois (supra)* pertaining to orders channeled through a local store and *Northwestern States Portland Cement Co.* v. *Minnesota (Williams* v. *Stockham Valves and Fittings, Inc.)*, 358 U. S. 450, 3 L. ed. 2d 421 (1959), and upon the *per curiam* affirmance of *Field Enterprises, Inc.* v. *Washington*, at 352 U. S. 806, 1 L. ed. 2d 39 (1956). *Norton* is discussed above. *Field Enterprises*, to the extent it is reconcilable with the reported opinions, related to sales from an in-state establishment.

Reliance upon *Northwestern States Portland Cement* in considering the application of an *unapportioned gross* receipts tax is a patent misapplication of that decision. *Northwestern States Portland Cement* dealt with an *apportioned net* income tax and not an unapportioned gross receipts tax. The distinction between such taxes is of controlling importance as has repeatedly been pointed out by the Court. (*Peck* v. *Low*, 247 U. S. 165, 62 L. ed. 1049

(1918); *United States Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321, 62 L. ed. 1135 (1918); *Shaeffer* v. *Carter*, 252 U. S. 37, 64 L. ed. 445 (1920); *Atlantic Coastline* v. *Dawton*, 262 U. S. 413, 67 L. ed. 1051 (1923); *Freeman* v. *Hewit*, 329 U. S. 249, 91 L. ed. 265 (1946) and the discussion in *Northwestern States Portland Cement* itself, where Mr. Justice Clark stated at page 460 as the basis for his opinion:

> "These cases stand for the doctrine that the entire *net income* of a corporation generated by interstate as well as intrastate activities may be fairly apportioned among the States for tax purposes by formulas utilizing in-state aspects of interstate affairs." [Emphasis supplied]

Mr. Justice Harlan stated, page 470,

> "This Court has consistently upheld state *net* income taxes of general application so applied as to reach that portion of the profits of interstate business enterprises fairly *allocable* to activities within the State's borders." [Emphasis supplied]

Thus none of the discussion in any of the opinions in *Northwestern States Portland Cement* contains any inference that would justify an unapportioned gross receipts tax.

Furthermore, because the decision in *Northwestern States Portland Cement* represented a departure from the previous pronouncements of the Court (Cf. Whittaker, J. and Frankfurter, J. dissents), the Congress promptly enacted Public Act 86-272 of 1959. Public Act 86-272 prohibits the imposition by any state of even an apportioned net income tax measured by income from interstate commerce, where the taxpayer's only activity in the taxing state consists of soliciting and fulfilling sales in interstate commerce. Under the facts in the case at bar the Appellant does not event solicit orders for sales of its products in Washington. It operates pursuant to "Dealer Selling Agreements" (executed outside Washington) under which

dealers place orders. In any event, those agreements call for sales in interstate commerce and the performance of such contracts is within the scope of the Commerce Clause. (*United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533, 88 L. ed. 1440 (1944). One statement by Mr. Justice Black in *South-Eastern Underwriters Ass'n* (at 322 U. S. 533, 547, 88 L. ed. 1440, 1454), is particularly apropos of the present dispute.

> "We may grant that a contract of insurance as a thing apart from negotiation and execution does not itself constitute interstate commerce. * * * But it does not follow from this that the Court is powerless to examine the entire transaction, of which the contract is but a part, in order to determine whether there may be a chain of events which becomes interstate commerce."

Without question, the events producing the receipts Washington here seeks to tax comprise a chain in interstate commerce.

While the opinion below does contain a recitation of "incidents" considered to bestow taxing power—some of which even have their situs outside Washington—they may all be summarized within the phrase "dealer representation" which means simply the supervision and enforcement of the "Dealer Selling Agreements".[2] Such "incidents", like the "incident of 'solicitation'" could only be "segregated by an act of mental gymnastics and made the fulcrum of the tax," (*Nippert* v. *Richmond*, 327 U. S. 416, 423, 90 L. ed. 760, 764 (1946)).

---

[2] Actually, although the recitation is extensive, only three "incidents" are noted: (a) sales incentive contests and programs, (b) national and local advertising, and (c) training dealer personnel in automobile service procedures including reconditioning used automobiles. The first two "incidents" are customary sales promotion devices; the third "incident" is a constituent part of fulfillment by dealers of "Dealer Selling Agreements" requiring compliance with standards of dealer performance.

As was stated by Mr. Justice Taft in *Board of Trade* v. *Olsen*, 262 U. S. 1, 36, 67 L. ed. 839, 850 (1922), the Court's decisions in regard to contracts within the Commerce Clause have,

> "• • • refused to permit local incidents of great interstate movement which, taken alone, were intrastate to characterize the movement as such."

The substantial public importance of the case at bar relates to those numerous business concerns, small and large, who do nothing within a taxing jurisdiction but promote interstate commerce, solicit orders to be fulfilled in interstate commerce, or, as is very often the case, receive orders initiated by the purchaser without any solicitation by the seller, and then, having contracted for such orders, supervise fulfillment in various ways.

Certainly the only business activities pertinent to the case at bar are those related to the fulfillment of orders which in the words of Public Act 86-272 are "sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State." Washington's attempted broad application of the tax in question to out-of-state sellers would be prohibited by that Federal Law if this were an apportioned net income tax. It is inconceivable that it was the intent of Congress to prohibit an *apportioned net* income tax in this type of situation while permitting an *unapportioned* tax on the entire *gross* proceeds from interstate commerce. There was no reason for Congress to include unapportioned gross receipts taxes within the prohibition of Public Act 86-272 because long before the *Northwestern States Portland Cement* decision, the foregoing decisions of the Court had already clearly proscribed such taxes upon the interstate situations comprehended by the Federal act, i.e., where "the only business activities within such State" consist of the solicitation of orders sent outside the State for approval or rejection, filled from a point outside the State; whether or not the orders are solicited by "various sales and incentive contests and programs, • • • national and local adver-

tising programs * * * joint programs * * * to assist the dealers" (opinion below) or any other "incident" of solicitation.

Secondly—the tax in question offends the Commerce Clause for the separate and distinct reason that it requires payment of a tax as a condition to conducting purely interstate business in Washington. The statute, without equivocation, states that "there is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities" in Washington (Washington Revised Code, Sec. 82.04.220). To the extent that the Washington Tax Commission has assessed this tax on a person seeking to engage solely in interstate business, as the Commission has done here, the tax is levied and collected for the sole privilege of engaging in interstate commerce. Again, a voluminous array of decisions of the Court has held that any state statute which interferes with interstate commerce by demanding payment of a tax as a condition to engaging in such commerce within a State is an invalid burden on the interstate commerce. The negotiation of sales of goods for the purpose of introducing them into the state in which the negotiation takes place is interstate commerce and must be protected from local interference, taxes or other burdens.[3]

---

[3] *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, 30 L. ed. 694 (1887); *Webber* v. *Virginia*, 103 U. S. 344, 26 L. ed. 565 (1881); *Moran* v. *New Orleans*, 112 U. S. 69, 28 L. ed. 653 (1884); *Leloup* v. *Port of Mobile*, 127 U. S. 640, 32 L. ed. 311 (1888); *McCall* v. *California*, 136 U. S. 104, 34 L. ed. 391 (1890); *Crutcher* v. *Kentucky*, 141 U. S. 47, 35 L. ed. 649 (1891); *Brennan* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719 (1894); *Stockard* v. *Morgan*, 185 U. S. 27, 46 L. ed. 785 (1902); *Norfolk & Western Railroad* v. *Sims*, 191 U. S. 441, 48 L. ed. 254 (1903); *Rearick* v. *Pennsylvania*, 203 U. S. 507, 51 L. ed. 295 (1906); *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 54 L. ed. 678 (1910); *Barrett* v. *City of New York*, 232 U. S. 14, 58 L. ed. 483 (1914); *Western Oil Refining Co.* v. *Lipscomb*, 244 U. S. 346, 61 L. ed. 1181 (1917); *Heyman* v. *Hays*, 236 U. S. 178, 59 L. ed. 527 (1915); *Looney* v. *Crane Co.*, 245 U. S. 178, 62 L. ed. 230 (1917); *International Paper*

(Footnote continued on next page)

Third—While Appellant, in its main brief, will undoubtedly show that the Washington tax discriminates against interstate sellers, we note that it is not even necessary to show discrimination in order to establish that a tax unconstitutionally burdens commerce (*Alpha Portland Cement Company* v. *Massachusetts*, 268 U. S. 203, 69 L. ed. 916 (1925), *J. D. Adams Manufacturing Co.* v. *Storen*, 304 U. S. 307, 312, 82 L. ed. 1365, 1369-70 (1958)). No novel feature is found in the Washington statute in this regard. Massachusetts employed a similar device of attempting to tax foreign corporations for the privilege of making sales in Massachusetts while, at the same time, imposing a tax on domestic corporations for business done there as the Washington statute here in controversy imposes a tax on foreign sellers and a similar tax on domestic manufacturers or sellers. However, the Massachusetts tax differed from the present, in that, as noted in the *Alpha Portland Cement* opinion (268 U. S. 203, 215, 69 L. ed. 916, 923) there was "no discrimination in the statute against interstate commerce" because of an equitable "allocation" of income. Nevertheless, the tax on foreign corporations selling in Massachusetts was held to be an excise "demanded on account of interstate business" and, therefore, a burden on interstate commerce and "invalid without regard to measure or amount" (268 U. S. 203, 217, 69 L. ed. 916, 923).

Fourth—The tax is invalid because it includes in its measure receipts from activities carried on in other states,

---

Company v. *Massachusetts*, 246 U. S. 135, 62 L. ed. 624 (1918); *Cheney Brothers Company* v. *Massachusetts*, 246 U. S. 147, 62 L. ed. 632 (1918); *Ozark Pipeline Corp.* v. *Monier*, 266 U. S. 555, 69 L. ed. 439 (1925); *Alpha Portland Cement Company* v. *Massachusetts*, 268 U. S. 203, 69 L. ed. 916 (1925); *Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 325, 69 L. ed. 982 (1925); *State Tax Commission* v. *Interstate Natural Gas Co.*, 284 U. S. 41, 76 L. ed. 156 (1931); *Anglo-Chilean Nitrate Sales Corporation* v. *Alabama*, 288 U. S. 218, 77 L. ed. 710 (1933); *Best & Company, Inc.* v. *Maxwell*, 311 U. S. 454, 85 L. ed. 275 (1940); *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760 (1946); *Spector Motor Service, Inc.* v. *O'Connor*, 340 U. S. 602, 95 L. ed. 573 (1951); *Memphis Steam Laundry Co.* v. *Stone*, 342 U. S. 389, 96 L. ed. 436 (1952).

outside the legislative jurisdiction of Washington. It thus not only burdens interstate commerce but also denies due process of law. All of Appellant's manufacturing, storage, distributing and most of its selling operations related to deliveries of its products into Washington took place in other states. The receipts sought to be taxed were derived not only from production and handling outside Washington but from selling operations which, except for minimal aspects, were conducted elsewhere. Yet, Washington seeks to tax the entire amount of gross receipts from all of those out-of-state operations whenever they are followed by delivery of products into Washington.

Thus, in the language of Mr. Justice Holmes in *Oklahoma* v. *Wells Fargo*, 223 U. S. 298, 302, 56 L. ed. 445, 448 (1912),

> "For, to recur to the statute, it is not simply a tax on all gross receipts within the state, * * * it is a tax on a proportion of total gross receipts, a considerable part of which * * * the state has no right to tax."

And, as stated in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 139, 82 L. ed. 155, 161 (1937) concerning a West Virginia gross receipts tax, a statement particularly pertinent to the case at bar except for the State's name therein:

> "A large part of respondent's work was performed at its plant at Pittsburgh. * * *
>
> "It is clear that West Virginia had no jurisdiction to lay a tax upon respondent with respect to this work done in Pennsylvania. * * * [A]n *apportionment* would in any event be necessary to limit the tax accordingly." [Emphasis supplied]

And again the Court stated in *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 311, 82 L. ed. 1365, 1369 (1938):

> "The vice of the statute as applied to receipts from interstate sales is that the tax includes in its measure, without *apportionment*, receipts derived from activities in interstate commerce * * *." [Emphasis supplied]

The tax at bar has the same two faults as the tax in the *Adams* case, namely, that it is imposed upon receipts derived (1) entirely from activities in interstate commerce and (2) from the employment of extra-state property and labor, utilized in making those very sales that Washington proposes to permit only if the tax is paid. To the same effect are *Wallace* v. *Hines*, 253 U. S. 66, 69, 64 L. ed. 782, 784 (1920); *Cooney* v. *Mountain States Telephone and Telegraph Company*, 294 U. S. 384, 79 L. ed. 934 (1934); *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U. S. 77, 82 L. ed. 673 (1938). Furthermore, even if the tax in question were a net income tax rather than a gross tax and thus a permissible exaction from interstate income, it would still be necessary to allocate the income so as to exclude from taxation the portion attributable to the out-of-state enterprise producing the income. (*Hans Rees' Sons* v. *North Carolina*, 283 U. S. 123, 75 L. ed. 879 (1931)).

In this connection, it may be noted that a minority of the Court, in *Interstate Oil Pipe Line Co.* v. *Stone*, 337 U. S. 662, 93 L. ed. 1613 (1949) would have sustained a tax on gross receipts derived from interstate commerce for the same two reasons relied upon by the Lower Court in this case, namely (1) no "discrimination", and (2) no "multiple burden"; *Galveston and Harrisburg Railway* v. *Texas*, 210 U. S. 217, 52 L. ed. 1031 (1908) to the contrary notwithstanding. However, the premise of those Justices who adopted that view in *Interstate Oil Pipe Line* for sustaining the tax there was that, even though interstate transportation was the subject of the tax, since *all* the property and activities producing the income were within the taxing state, there was no attempt to tax activity carried on outside the jurisdiction, the receipts were thus automatically allocated and no further "apportionment" was necessary. But such are not the facts of the case at bar. Here none of the property producing the receipts is within Washington. Even under that minority doctrine in *Interstate Oil Pipe Line*, this tax is invalid.

Moreover, the doctrine espoused by the minority in *Interstate Oil Pipe Line* and followed by the Court below in the case at bar, was rejected by this Court in *Spector Motor Service Co.* v. *O'Connor*, 340 U. S. 602, 610, 95 L. ed. 573, 579 (1951) and in that case the taxing statute did purport to allocate income to those phases of the commerce incident to the taxing state.

All of the foregoing brings us to *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250, 82 L. ed. 823 (1938), a decision of particular import to magazine publishers. There, in a case arising on demurrer, the Court held as a matter of law that "the business of preparing, printing and publishing magazine advertising is peculiarly local and distinct from its circulation" (303 U. S. 250, 258, 82 L. ed. 823, 829). Since this "business" was held to be a local one, the full receipts from the sale and distribution of the advertising were regarded to be within the taxing powers of the state where the "preparing, printing and publishing" were done, even though the taxed receipts were earned only from the "business" of circulating the advertising. In those circumstances, the Court made the assumption that the receipts could not be taxed in any jurisdiction other than where the "preparing, printing and publishing" were done (if they were all done in the same state) and then proceeded, by *obiter dictum*, to enunciate, for the first time in any reported opinion, the "multiple burden" test as an "*added reason*" for sustaining the tax.

The *Western Live Stock* dictum was recognized as a "new doctrinal trend" (*Spector Motor Service, Inc.* v. *Walsh*, 139 F. 2d 809, 814 (2d Cir. 1944); *Spector Motor Service, Inc.* v. *O'Connor*, 181 F. 2d 150, 153 (2d Cir. 1950)), but when the Circuit Court sought to apply this "new doctrinal trend" to sustain a tax on interstate income, its decision was reversed in *Spector Motor Service, Inc.* v. *O'Connor*, 340 U. S. 602, 95 L. ed. 573 (1951).

As stated by the Washington Supreme Court, the Court from which the present appeal is taken, in *B. F. Goodrich* v. *State of Washington*, 38 Wash. 2d 663, 231 P. 2d 325 (1951), cert. den. 342 U. S. 876, 96 L. ed. 659 (1951):

> "* * * In resolving these principles, the court has not always been doctrinally consistent, and at least from the time (1938) of *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250, 82 L. ed. 823, 58 S. Ct. 546, 115 A. L. R. 944, the relevant cases have been confusing and contradictory in rationale."

Thus was seeded much of the "tangled underbrush of past cases" referred to by Mr. Justice Clark in *Northwestern States Portland Cement Co.* v. *Minnesota (Williams* v. *Stockham Valves and Fittings, Inc.)*, 358 U. S. 450, 3 L. ed. 2d 421 (1959).

Although the *Western Live Stock* dictum has been repeated frequently, the "*added* reason" given therein for sustaining a tax has never been controlling in any decided case and whenever it might have been, the doctrine has been flatly rejected (*Nippert* v. *Richmond*, 327 U. S. 416, 90 L. ed. 760 (1946); *Joseph* v. *Carter and Weeks Stevedoring Co.*, 330 U. S. 422, 91 L. ed. 998 (1946); *Memphis Steam Laundry* v. *Stone*, 342 U. S. 389, 96 L. ed. 436 (1952); *Michigan-Wisconsin Pipeline Co.* v. *Calvert*, 347 U. S. 157, 98 L. ed. 583 (1954) and compare *Gwin, White & Prince* v. *Henneford*, 305 U. S. 434, 83 L. ed. 272 (1939) where the Court invalidated an assessment of the Washington Occupation Tax but suggested that the defect might be cured by apportionment).

If a business can be carved up into "separate businesses" such as "printing" without selling, as was done in *Western Live Stock* or separate "activities" such as "selling" alone as is attempted by the statute at bar, the question remains as to whether and how a state may tax any one of the pieces. Separate taxes by countless municipalities as well as states on various "activities", "incidents" or pieces of a magazine publishing business, each computed

without reference to the others would *per se* seriously hamper the business. The "multiple burden test" of *Western Live Stock* may recognize that this question exists but it does not resolve it. If, as was decided in *Western Live Stock*, "preparing, printing and publishing" a magazine is a separate and local business, it cannot be denied that the negotiation and execution of contracts for advertising and magazine sales and the circulation of the magazine which comprise the rest of the "business"—or businesses—of magazine publishing constitute commerce and, so far as here pertinent, interstate commerce. Any tax on the full value of that commerce is invalid because it burdens interstate commerce (*supra*, p. 5). The sale as well as the shipment, circulation and delivery of the product is commerce (*Danke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 66 L. ed. 239 (1921); *Nippert* v. *Richmond*, 327 U. S. 416, 90 L. ed. 760 (1946)).

It is respectfully submitted that for these reasons the appeal herein should be granted and the judgment of the Washington Supreme Court reversed.

Respectfully submitted,

RICHARD JOYCE SMITH,
Counsel for MAGAZINE PUBLISHERS ASSOCIATION, INC., as
Amicus Curiae,
522 Fifth Avenue,
New York 36, N. Y.

E. KENDALL GILLETT, JR.,
ANSLEY KIME,
Of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 3 1963
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARKE SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

OBJECTIONS OF APPELLEES TO MOTIONS FOR LEAVE TO FILE BRIEFS OF *AMICUS CURIAE*

JOHN J. O'CONNELL
Attorney General of the State of Washington

JOHN W. RILEY
JAMES A. FURBER
TIMOTHY R. MALONE
LLOYD W. PETERSON
Assistant Attorneys General

Of Counsel

Office of the Attorney General: Temple of Justice, Olympia, Wash.

STATE PRINTING PLANT OLYMPIA, WASH., 1963

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARKE SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

OBJECTIONS OF APPELLEES TO MOTIONS FOR LEAVE TO FILE BRIEFS OF *AMICUS CURIAE*

JOHN J. O'CONNELL
Attorney General of the State of Washington

JOHN W. RILEY
JAMES A. FURBER
TIMOTHY R. MALONE
LLOYD W. PETERSON
Assistant Attorneys General

Of Counsel

Office of the Attorney General: Temple of Justice, Olympia, Wash.

STATE PRINTING PLANT OLYMPIA, WASH. 1962

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARKE SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

OBJECTIONS OF APPELLEES TO MOTIONS FOR LEAVE TO FILE BRIEFS OF *AMICUS CURIAE*

(Automobile Manufacturers Assoc. Inc.;
National Association of Manufacturers;
Electronic Industries Association;
Magazine Publishers Association Inc.,
National Coal Association, *Applicants*)

Pursuant to Rule 42(3) of the Rules of the Supreme Court of the United States, the appellees respectfully object to the motions of the several

applicants for leave to file briefs as *amicus curiae* in support of the jurisdictional statement.

Appellees' objections are directed to the motions of the following applicants:

Automobile Manufacturers Assoc. Inc.;
National Association of Manufacturers;
Electronic Industries Association;
Magazine Publishers Association Inc.,
National Coal Association.

I. APPELLEES' REASONS FOR WITHHOLDING CONSENT TO FILING OF BRIEFS OF *AMICUS CURIAE* BEFORE THE JURISDICTIONAL STATEMENT.

1. The instant litigation has been under way for ten years. The facts and questions of law have been hard fought and thoroughly briefed and researched by the two present parties to this proceeding. Counsel for General Motors are most eminent and highly qualified to argue every question of law or fact which can be said to be involved in the instant litigation.

2. Even if this case can be said, *arguendo*, to precipitate a substantial federal question, the facts here (although detailed and complex because of the magnitude and unique *modus operandi* of appellant's multi-state business operations) make it highly improbable (if not impossible) that *amicus curiae* can "* * * set forth facts or questions of law that have not been, or reasons for believing that they will not * * * be, presented by the parties, * * *" as required by Rule 42(3).

3. Appellees sincerely believe that participation of *amici curiae* before the court's consideration of the appellant's jurisdictional statement cannot and will not be of assistance to the court.

4. The burden of answering the five briefs of *amici curiae* within the time provided by Rule 16 for preparation and filing of the appellees' motion to dismiss imposes an unfair and unnecessary burden on the appellees, if not also upon the court.

II. ADDITIONAL OBJECTIONS OF APPELLEES TO THE MOTIONS OF APPLICANTS.

A. APPLICANTS HAVE FAILED TO COMPLY WITH RULE 42(3).

Rule 42(3) of the Rules of the Supreme Court of the United States provides that when consent to the filing of a brief as *amicus curiae* is refused by a party to the case, the applicant must state precisely "* * * the nature of the appellant's interest, * * * [*the*] *facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties,* and their relevancy to the disposition of the case * * *". (Rule 42(3), *supra*) (Emphasis supplied.)

It is respectfully submitted than an examination of the several motions in question will disclose that none of the applicants has complied with Rule 42(3).

B. APPLICANTS MISAPPREHEND THE NATURE OF THE TAX INVOLVED AND THE FACTS OF THIS CASE.

The portions of the Washington business and occupation tax which are involved in this case have

been in effect since 1935. The Statute in question imposes a tax "* * * upon persons for the act or privilege of engaging in business activities * * * within the State of Washington." RCW 82.04.220; 82.04.270(1).[1] The constitutional validity of the tax has been litigated many times.[2]

Nevertheless, each prospective applicant has jumped to the conclusion that the tax involved in the case is a tax *on* interstate commerce, or a tax *on* interstate sales.[3]

---

[1] RCW 82.04.220. "There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

RCW 82.04.270(1). "Upon every person except persons taxable under subsection (1) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent."

[2] Crown Zellerbach Corp. v. State, 53 Wn. (2d) 813, 328 P. (2d) 884, appeal dism., cert. den. 359 U.S. 531 (1958).

Field Enterprises v. State, 47 Wn. (2d) 852, 289 P. (2d) 1010, aff'md per curiam 352 U.S. 806 (1955).

B. F. Goodrich Co. v. State, 38 Wn. (2d) 663, 231 P. (2d) 325, cert. den. 342 U.S. 876 (1951).

Gwin, White & Prince v. Henneford, 305 U.S. 434 (1939).

Puget Sound Stevedoring Co. v. Tax Commission, 302 U.S. 90 (1937).

Standard Oil Co. of Cal. v. State of Washington, 57 Wn. (2d) 56, 355 P. (2d) 349, cert. den. 365 U.S. 859 (1961).

State ex rel. Stiner v. Yelle, 174 Wash. 420, 25 P. (2d) 91 (1933).

U.S. Steel Corp. v. State, 51 Wn. (2d) 224, 316 P. (2d) 1099, appeal dism. 358 U.S. 46 (1958).

Wash.-Ore. Shippers, etc. v. Schumacher, 59 Wn. (2d) 159, 367 P. (2d) 112, cert. den. 370 U.S. 937 (1962).

[3] The National Coal Association states that "the basic question involved in the present case is the power of a state to levy a tax on

III. CONCLUSION

Accordingly, appellees respectfully request the court to deny the motions of the various applicants to file briefs as *amicus curiae* in support of appellant's jurisdictional statement.

Respectfully submitted,

JOHN J. O'CONNELL
Attorney General of the State of Washington, Temple of Justice, Olympia, Washington,

JOHN W. RILEY
Special Assistant Attorney General 535 Central Building, Seattle, Washington,

JAMES A. FURBER
TIMOTHY R. MALONE and
LLOYD W. PETERSON
Assistant Attorneys General, General Administration Building, Olympia, Washington,

Attorneys for Appellees.

---

the privilege of engaging in interstate commerce measured by gross receipts from interstate commerce."

The Electronic Industries Association alleges that "in connection with the sale and distribution of products of most E.I.A. members it is essential that the manufacturer provide engineering advice and service to the ultimate customer, who would be able to fit the electronic product into his own operation without advice and assistance."

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 3 1963
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

JOHN J. O'CONNELL,
Attorney General of the State of Washington,
Temple of Justice, Olympia, Washington,

JOHN W. RILEY,
Special Assistant Attorney General,
535 Central Building, Seattle, Washington,

JAMES A. FURBER,
TIMOTHY R. MALONE and
LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Building, Olympia, Washington,

Attorneys for Appellees.

STATE PRINTING PLANT OLYMPIA, WASH., 1963

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

JOHN J. O'CONNELL,
Attorney General of the State of Washington,
Temple of Justice, Olympia, Washington,

JOHN W. RILEY,
Special Assistant Attorney General,
535 Central Building, Seattle, Washington,

JAMES A. FURBER,
TIMOTHY R. MALONE and
LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Building, Olympia, Washington,

Attorneys for Appellees.

STATE PRINTING PLANT OLYMPIA, WASH., 1963

INDEX

	Page
STATUTES INVOLVED	6
COUNTER-STATEMENT OF FACTS	7
1. Introduction	7
2. The Facts	8
Chevrolet Class A Sales	12
Chevrolet Class B, Pontiac and Oldsmobile Transactions	12
General Motors Parts Transactions	13
COUNTER-STATEMENT OF THE ESSENTIAL QUESTIONS OF LAW INVOLVED IN THIS CASE	14
1. Due Process	14
2. Interstate Commerce—Undue Burden	16
3. Interstate Commerce—Discrimination	16
THE APPEAL DOES NOT PRESENT A "SUBSTANTIAL" FEDERAL QUESTION	16
Introduction	16
A. NORTON CO. v. DEPARTMENT OF REVENUE IS DISPOSITIVE OF THIS APPEAL	18
B. DUE PROCESS: THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AS TO DUE PROCESS. [Appellant's Question No. 3; Appellees' Question No. 1]	19
C. INTERSTATE COMMERCE—THIS TAX ON LOCAL ACTIVITIES DOES NOT IMPOSE AN UNDUE BURDEN ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2]	21
D. THE TAX DOES NOT IMPOSE A "MULTIPLE BURDEN" ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2]	25
E. THERE IS NO SHOWING THAT THE TAX PROVIDES ANY COMMERCIAL ADVANTAGE TO INTRASTATE BUSINESS. [Appellant's Question No. 2; Appellees' Question No. 3]	28
THE QUESTIONS ARE NOT SUBSTANTIAL AS A MATTER OF PUBLIC IMPORTANCE	30
CONCLUSION	33

TABLE OF CASES

Page

J. A. Adams Manufacturing Co. v. Storen, 304 U. S. 307 (1938) 26, 27

American Mfg. Co. v. St. Louis, 250 U. S. 459 (1919) 23

Central Greyhound Lines v. Mealey, 334 U. S. 653 (1948) 22, 23

Crown Zellerbach Corp. v. State, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954) 29

Field Enterprises v. State, 47 Wn. (2d) 852, 280 P. (2d) 1010, aff. per curiam 352 U. S. 806 (1955) 22, 23

B. F. Goodrich Co. v. State, 38 Wn. (2d) 663, 231 P. (2d) 325, cert. den. 342 U. S. 876 (1951) 23

Gwin, White & Prince v. Henneford, 305 U. S. 434 (1939) 26, 27

International Harvester v. Dept. of Treasury, 322 U. S. 340 (1944) 28

International Shoe Co. v. Washington, 326 U. S. 310 (1945) 19

Nippert v. Richmond, 327 U. S. 416 (1946) 17

Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves, 358 U. S. 450 (1959) 19, 23, 25

Norton Co. v. Department of Revenue, 340 U. S. 534 (1951) 18, 19, 20, 21, 22, 23, 26, 27, 30

Scripto, Inc. v. Carson, 362 U. S. 207 (1960) 23

Spector Motor Service v. O'Connor, 340 U. S. 602 (1951) .. 23

West Publishing Co. v. McColgan, 328 U. S. 823 (1946) .. 18

Western Livestock v. Bureau of Revenue, 303 U. S. 250 (1938) 22, 23, 25, 30

Wisconsin v. J. C. Penney Co., 311 U. S. 435 (1940) .. 19, 20, 23

STATUTES

Revised Code of Washington

RCW 82.04.220 6
RCW 82.04.270 ..... 6, 12
RCW 82.04.270(1) 6

Federal

P.L. 86-272 (73 Stat. 555, 15 U. S. C. § 381-84 31

UNITED STATES CONSTITUTION

Art. I, § 8 7
Fourteenth Amendment, § 1 7

RULES OF THE UNITED STATES SUPREME COURT

Rule 16 5

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARK SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of the United States Supreme Court, appellees respectfully request that this court enter an order dismissing the appeal on the ground that this case does not present a substantial federal question.

STATUTES INVOLVED

The essential Washington statutes involved in this proceeding are sections 220 and 270 of chapter 82.04 of the Revised Code of Washington. (Cited "RCW", i. e. "RCW 82.04.220.")

RCW 82.04.220 identifies the legal incidence of the tax involved here as a "* * * tax for the act or privilege of engaging in business activities."[1]

The "measure" of the tax involved here is defined in the second sentence of RCW 82.04.220, *supra*, as the product of the "* * * rates against value of products, gross proceeds of sales or gross income of the business, as the case may be." (RCW 82.04.220, *supra*.)

This case involves but one classification of Washington tax: "Wholesaling." Wholesaling is defined by the Washington legislature so as to provide for imposition of the tax. "Upon every person * * * engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate * * *" (of .003 during the audit period involved (RCW 82.04-.270(1)).

---

[1]The complete text of Section 82.04.220 of the Revised Code of Washington provides:

"There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

COUNTER-STATEMENT OF FACTS

1. INTRODUCTION.

The facts upon which the decision appealed from is based, and upon which this motion is based, are contained in a voluminous record which was carefully reviewed by the supreme court of the State of Washington. (See Decision of the Washington Court, Appendix B of Juris. St.) The counter-statement set forth hereinbelow is offered by appellees, in order to (1) identify the business activities engaged in within the State of Washington by General Motors (appellant); (2) ascertain the relationship between those activities and the sales included in the measure of the tax involved in this case; (3) ascertain whether the tax impinges upon interstate commerce so as to be repugnant to the commerce clause of the United States constitution (Art. I, § 8), and (4) to ascertain whether the tax can be said to violate the due process clause of the United States constitution (Fourteenth Amendment, § 1).

By its characterization of the problem and formulation of the issues of this case, appellant would have this court assume that General Motors engages in practically no identifiable local activity. But as the Washington state supreme court's opinion and the voluminous record below show, the facts are otherwise.

2. THE FACTS.

General Motors is a Delaware corporation qualified to do business in the State of Washington. The trial court found that during the audit period in question General Motors did engage in business activities within the State of Washington.

General Motors engages in business in the State of Washington through several divisions and subsidiaries; however, only the activities of Chevrolet, Pontiac, Oldsmobile, and General Motors Parts Divisions are directly involved in this action.

The courts below found that the activities of the divisions of General Motors involved in this proceeding included

> "* * * the sale of automobiles, trucks, parts and accessories to retail dealers, and, also, included the establishment and maintenance of effective dealer representation, partially accomplished by arranging various sales and incentive contests and programs offered and conducted, separately or jointly, with the dealer and other components of the General Motors organization; national and local advertising programs conducted by General Motors through various media; joint programs conducted at the dealer's place of business to assist the dealer in maintaining and developing a prosperous used-car department, including training of dealer's service personnel in the art of reconditioning automobiles utilizing mobile trainers; and on the job training of dealer employees seeking to develop a strong and capable service department so as to increase the quality of service rendered to the retail purchaser of General Mo-

tors' products." (Opinion of State Supreme Court, Juris. St. 5a.)

It is clear from the record that General Motors accomplishes its primary purpose of making wholesale sales of its manufactured products by its emphasis upon the establishment of and maintenance of its retail dealer organization. Thus,

> "General Motors achieves its wholesale sales of the automobiles, trucks, parts and accessories by the development and maintenance of a strong retail dealer representation; and General Motors' zone employees, including district managers, are charged with the responsibility of developing, maintaining, and promoting retail dealer representation, along with the general duties of promoting, developing, and maintaining good will and public esteem for General Motors' products. The trial court found that the activities of the field organization have a direct effect upon the sales and operations of the independent retail dealers." (Opinion of State Supreme Court, Juris. St. 7a.)

To achieve a "strong" retail dealer organization and hence to make wholesale sales, General Motors maintains a field organization which ministers to the needs of the dealers and supervises compliance with the terms of a standard written contract called a "Dealer Selling Agreement" which is in all material respects uniform for all dealers in the state.

> "The dealer's facilities are his own. He provides the tools, supplies, signs, and an inventory of parts and accessories. New and used automobiles are also owned by the dealer, subject, in the case of new automobiles, to financing arrangements with banks or finance companies,

which frequently include General Motors Acceptance Corporation, a wholly owned corporate subsidiary of General Motors. The 'Dealer Selling Agreement' provides certain restrictions on the dealers' use of their own facilities and equipment. A dealer is expected to maintain a place of business, a sales room, and a service department satisfactory to General Motors. The dealer may not establish or move a branch sales office or service organization without written consent of General Motors. Every dealer is required to, and does, submit his books, records, and accounts to General Motors, and to maintain a satisfactory uniform accounting system designated by General Motors. Every dealer is required to meet minimum capital requirements as specified and determined by General Motors. Every dealer is required to, and does, maintain and erect uniform or standard product signs and is required to, and does, participate in advertising campaigns conducted nationally and locally by General Motors. Every dealer is required to carry in stock at all times parts and accessories sufficient to provide prompt and satisfactory service to retail purchasers of General Motors products. Dealers uniformly agree to buy such special tools as are developed by General Motors for the servicing of their products." (Opinion of State Supreme Court, Juris. St. 8a.)

Each retail dealer is assigned a "zone of influence" within which he enjoys the distinction of being the only retail outlet for the specific product for which he is dealer. More important, he is also considered responsible for the development of the General Motors' share of the retail market within his designated "zone of influence." The "sales objective" of the dealers is arrived in "consultation"

with the dealer to determine what the dealer should stock and sell. Once that projection and estimate has been made and a meeting of the minds between the district manager and the dealer arrived at, the dealer places individual orders on a separate form to specify color option, etc. (Tr. 0203). These projections are monthly (Tr. 0040) and are considered to be orders (Ex. 5, PN-19a, "Zone Office Manual").

If a dealer's orders are less than the "projections" of "sales objective," representatives of the particular division of General Motors "counsel and advise" the dealer to determine why the sales objective is not being accomplished, and to assist the dealer in taking "corrective action." (Opinion of State Supreme Court, Juris. St. 10a).

But long before the event of "counseling and advising," General Motors' representatives have busied themselves in "local activity" at the dealer's place of business and elsewhere in the State of Washington aimed at accomplishing its wholesale sales objective in this state. The General Motors' representative trains the retail dealer's salesmen, participates with the dealer in conducting sales contests, trains the dealer's mechanics, investigates customer complaints, trains the dealer's parts managers and accountants, and conducts joint programs at the dealer's place of business to assist the dealer in maintaining a prosperous used car department. The dealer's finances are even scrutinized in carrying out the General Motors' program of maintaining

a "strong" dealer organization, because a strong dealer can meet competition, assures better customer relations, and hence a greater volume of sales of General Motors' manufactured products.

The taxes in question were measured by the gross proceeds from wholesale sales by General Motors to its retail dealers in the State of Washington under the following designations:

1. Chevrolet Class A Transactions.
2. Chevrolet Class B, Oldsmobile and Pontiac Transactions.
3. General Motors Parts Transactions.

Chevrolet Class A Sales

All of the activities described above were performed in connection with Chevrolet Class A sales. In addition, a Seattle branch office, operating under direction of the Portland zone office, participated in these sales by expediting deliveries and performing additional promotional work. It should be noted here that since January 1, 1954, General Motors has maintained a "zone office" in Seattle for its Chevrolet division. Its activities are taxed, and such taxes since 1954 are not in dispute here (Tr. 0035). Such taxes are measured only by the gross proceeds of sale to General Motors' Washington dealers (RCW 82.04.270).

Chevrolet Class B, Pontiac and Oldsmobile Transactions.

All of the activities described above are performed in connection with Chevrolet Class B sales,

Pontiac and Oldsmobile. Thus, the extent or degree of local activity for which the tax is being imposed is the same as in Chevrolet Class A except for the absence of a fixed physical facility with the name of the particular division on the office door. However, it should be noted that district managers in all cases receive mail and telephone calls at their homes and also conduct much of their business at the dealer's place of business or in the dealer's locale.

General Motors Parts Transactions.

The gross proceeds from sales of parts to General Motors dealers in Washington have been separated from the other categories. General Motors parts are sold to dealers in the State of Washington through two parts warehouses: One in Washington and one in Oregon. If the warehouse in Seattle does not stock a particular item, it is shipped from Portland.

Although General Motors parts division does not have a field organization similar to that of other divisions, personnel from other divisions who do work with the retail dealers carry out General Motors policies by means of the enforcement of the provisions of the Dealer Selling Agreement.

The sales of General Motors parts distributed from the Seattle warehouse have been included in the measure of General Motors' tax. This portion of General Motors' tax is not in dispute here. However, General Motors disputes the inclusion of the

gross proceeds from sales of parts to retail dealers in Washington which were distributed from General Motors' Portland, Oregon, warehouse.

COUNTER-STATEMENT OF THE ESSENTIAL QUESTIONS OF LAW INVOLVED IN THIS CASE

In its attempted definition of the usual "due process" and "interstate commerce" questions which seem to be typical of attacks upon state and local taxes, appellant characterizes taxable local activities of General Motors as so *de minimis* or negligible as to defy taxation at the state level as a matter of due process. It also misstates the statutory nature and incidence of the tax. Appellees respectfully submit that appellant should have stated the questions more objectively as follows:

1. *Due Process.*

Is a Washington Tax which is imposed upon persons for the act or privilege of engaging in business activities within the state and which is measured by the gross proceeds from wholesale sales to customers within the state, repugnant to the due process clause of the United States constitution when applied to a multi-state corporation which makes wholesale sales to retail dealers located within the state and, in connection with such sales, engages within the state in the following activities:

(a) Regular and constant contact with each dealer at the dealer's place of business

through "district managers" whose duties include the responsibility to maintain the required dealer organization in the territory assigned to him and to promote the business of the division in this territory. In carrying out this responsibility, the district manager is to contact assigned dealers or branches in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the divisional sales policies and promotional and training plans to improve the selling ability of the sales organization. His duties include contacting assigned dealers or branches at designated intervals and securing orders for the division's products; assisting the outlet's sales manager in organizing and training its sales force; assisting in controlling the used product inventory; and advising outlets of changes in divisional policies; passing on to dealers any knowledge gained of competitive products and being responsible for closing open points.

(b) Regular and frequent training schools, sales meetings, and other meetings to improve various aspects of the dealer's business and thus increase wholesale sales to the dealer.

(c) Other local activities of other personnel and other "divisions" and subsidiaries of the taxpayer which are directed toward stimulation of retail customer satisfaction, and trade through service.

2. *Interstate Commerce—Undue Burden.*

Is such a tax repugnant to the commerce clause of the United States constitution on the grounds that

(a) Such a tax impinges upon and imposes an undue burden upon interstate commerce?

(b) Such a tax imposes multiple burdens upon interstate commerce?

3. *Interstate Commerce—Discrimination.*

Is such a tax which is applicable to all who engage in the business of making sales at wholesale within the State of Washington repugnant to the commerce clause when it fails to tax Washington manufacturers with respect to their manufacturing activities, if the gross proceeds from sales of such manufactured products have been included in the measure of the Washington tax on wholesaling activities?

THE APPEAL DOES NOT PRESENT A "SUBSTANTIAL" FEDERAL QUESTION

Introduction

Underlying all of the arguments made by the appellant in its jurisdictional statement before this court, and underlying all of the disagreements between appellant and appellees in the court below, is a basic factual problem which, the appellees feel, should be made clear to this Court. This is the problem of characterizing the activities of appellant's

personnel in Washington state. Appellant would characterize these activities as *de minimis*, and would equate them with the activities of itinerant drummers or "missionary men," such as those discussed in *Nippert v. Richmond*, 327 U. S. 416 (1946).

The Washington state supreme court, along with appellees, give these activities a completely different characterization. As shown by the passages of the opinion of the state supreme court, quoted in appellees' counter-statement, the key to General Motors' wholesaling operations is the maintenance of its "quality dealer organization," (Tr. 0134) and the key to the maintenance of this organization is the constant activity and contact of the General Motors' field organization with its dealers in the State of Washington. In order to insure success of its wholesaling activities this activity and contact carried on through personnel, both resident and non-resident personnel, is large enough and extensive enough to pervade every single aspect of the dealer's business. (This characterization applies to all classes of transactions; in addition, Chevrolet Class A sales involved participation of a local branch office.)

In short, appellees agree completely with appellant's statement that: "The controlling consideration is the *character* of General Motors' in-state activities." (Juris. St., p. 12; emphasis in original.) Appellees, on the other hand, disagree completely with the character which appellant gives these activities.

A. NORTON CO. V. DEPARTMENT OF REVENUE IS DISPOSITIVE OF THIS APPEAL.

Norton Co. v. Department of Revenue, 340 U. S. 534 (1951), disposes of the same "due process" and "interstate commerce" arguments now made by General Motors here. Unless the instant decision of the supreme court of the State of Washington can be said to be inconsistent with *Norton*, there is no new different or substantial federal question presented by this appeal.

It is true that the *Norton* case involved factual situations where the taxpayer conducted certain activities through a local office.

However, as the Washington state supreme court forcefully stated,

> "* * * absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations. * * *" (Juris. St., p. 15a.)

West Publishing Co. v. McColgan, 328 U. S. 823 (1946), provides adequate authority for the Washington court's position, and a complete answer to any argument that presence of an office is essential in order to sustain state taxing power.

> "* * * The opinion [*West Pub. Co. v. McColgan, supra*] was not grounded on the triviality that office space was given West's solicitors by attorneys in exchange for the chanceful use of what books they may have had

on hand for their sales activities. * * *" *Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), at 461.

West Publishing Company cited as one of the controlling cases, *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), which did not involve any office at all.

Although it is appellees' position that presence of a local office is not an essential prerequisite to state taxing power, it should be noted that General Motors' field representatives are in effect "officed" within the state by virtue of the use of private homes for receipt of business mail and telephone calls.

Accordingly, the only factor of any significance distinguishing the *Norton* case from the present factual situation (the fact that some activities are not carried on through an office, with a sign on the door, physically located in Washington) is not of sufficient importance to prevent the *Norton* case from being dispositive of appellant's contentions in this appeal.

B. DUE PROCESS: THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AS TO DUE PROCESS. [Appellant's Question No. 3; Appellees' Question No. 1.]

In *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940), this court applied basic rules concerning "due process" limitations upon the powers of the states to impose taxes which seem applicable here, even though we are dealing here with a different type of tax.

> "The Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax. A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society.
>
> "Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text. * * * These tags are not instruments of adjudication but statements of result in applying the sole constitutional test for a case like the present one. That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. * * *" *Wisconsin v. J. C. Penney Co.*, *supra*, 444.

This court has held that a market state may impose a tax, measured by gross receipts, when the only in-state activity of the taxpayer is the forwarding of orders through its local office, from in-state customers to its out-of-state headquarters, or the breaking down of shipments for such in-state customers. *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951) *supra*.

Unless we are to reduce application of the due process clause to a matter of "tags," i.e., "office"

and "no office", it is clear that application of the gross receipts tax is even fairer in this case than in *Norton*. For in this case local personnel secure orders, and do not just forward them; and local and nonresident personnel are constantly operating in this state and pervading every aspect of the dealer's business.

The standards of fairness applied in *Norton* are certainly more than met here. For here we have, not just mechanical forwarding, as a convenience to the customer, of orders, or breaking down of shipments of merchandise; we have instead constant and extensive in-state operations which are absolutely necessary for and indeed the key to the entire wholesaling operation.

C. INTERSTATE COMMERCE—THIS TAX ON LOCAL ACTIVITIES DOES NOT IMPOSE AN UNDUE BURDEN ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2.]

In its discussion of its first question (corresponding to appellees' second question), appellant would compartmentalize the activities of a multistate business into intrastate, interstate, and extrastate activities. Such a compartmentalization completely misconstrues the problem. For appellant contends that, before the State of Washington can tax its local activities, it must be shown that these local activities are strictly intrastate in character, and constitute a separable local business (Juris, St. pp. 11 and 12).

Norton v. Dept. of Revenue, supra, holds otherwise. For in *Norton* the activities of the Norton Company, in forwarding orders from its Illinois customers to its out-of-state headquarters, or in breaking down shipments, certainly did not constitute any separable local business, completely divorced from interstate commerce. "The Illinois Supreme Court recognized that it was dealing with interstate commerce." *Norton v. Dept. of Revenue*, 340 U. S. at p. 536.

This statement can also be made with regard to the decision of the Washington state supreme court in this case. And we may also say of this case:

> "This case serves to remind once more that courts do not adjudicate abstractions, such as, 'What is interstate commerce?' * * *" *Central Greyhound Lines v. Mealey*, 334 U. S. 653 (1948), at p. 655.

The Washington state supreme court, accordingly, applied the test in effect set down by *Norton*, and the only realistic test possible, viz., considering the nature and extent of the taxpayer's in-state activities, is the tax on those activities and undue burden upon interstate commerce? Appellant submits that it is not.

The states have authority to impose taxes upon "persons engaging in business" within the taxing state, "measured" by the taxpayer's gross receipts. *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938); *Field Enterprises v. State*, 47 Wn. (2d) 852, 280 P. (2d) 1010, *aff. per curiam* 352 U. S. 806

(1955); *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325, *cert. den.* 342 U. S. 876 (1951); *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951); *American Mfg. Co. v. St. Louis*, 250 U. S. 459 (1919).[3]

A tax may be imposed upon a person whose local activities are part of the taxpayer's interstate operations, as long as the tax is not discriminatory as to interstate commerce. *Central Greyhound Lines, Inc. v. Mealey*, 334 U. S. 653 (1948); *Spector Motor Service v. O'Connor*, 340 U. S. 602 (1951); *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938); *American Mfg. Co. v. St. Louis*, 250 U. S. 459 (1919); *Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves*, 358 U. S. 450 (1959); *Scripto, Inc. v. Carson*, 362 U. S. 207 (1960); *Norton v. Dept. of Revenue, supra; B. F. Goodrich v. State, supra; Field Enterprises v. State, supra.*

Nor has General Motors shown that any of the items included in the measure of its tax here are so clearly "interstate in character that the State could not reasonably attribute its proceeds to the local business * * *" *Norton v. Dept. of Revenue, supra.*

From the foregoing basic premises, we submit that the taxes assessed by appellees are constitutional

[3]Cf. Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves, 358 U. S. 450 (1959); Scripto, Inc. v. Carson, 362 U. S. 207 (1960); *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940).

and that no substantial federal question as to interstate commerce is presented because

(a) General Motors is a "person" engaged in extensive local activities.

(b) General Motors' extensive local activities are directly and obviously connected with those sales, the gross proceeds of which were included in the measure of tax which the state may rightfully impose upon it for the privilege of engaging in such activities within the state.

(c) General Motors' local activities were essential to the completion of the sales, the gross proceeds of which were used to measure the tax.

(d) The fact that General Motors is a multistate operation and the fact that the sales used to measure the tax are consummated "over state lines" does not defeat the tax or change its character so as to render it repugnant to the commerce clause.

It is to be noted that the *appellant argues not that the tax should be reduced* or that it should be apportioned—rather, it argues that General Motors should be exempt from the Washington tax on its local activities because General Motors' operations embrace all fifty states of the Union. Thus, General Motors argues not for tax equality for multi-state business enterprises, but for inequality in its favor.

D. THE TAX DOES NOT IMPOSE A "MULTIPLE BURDEN" ON INTERSTATE COMMERCE. [Appellant's Question No. 1; Appellees' Question No. 2.]

Previous discussion has highlighted the applicability of the following principles of law as announced by this court, which are dispositive of any commerce clause issues in this case. Interstate commerce must bear its share of state taxation and "the bare fact that one is carrying on interstate commerce does not relieve him from many forms of state taxation which add to the cost of his business." *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938).

Local business activities may be an incident of state taxation even though the activities are part of a multi-state operation. *Western Livestock v. Bureau of Revenue, supra.*

Absent discrimination against interstate commerce, a tax on local business activities of a multi-state business enterprise is not repugnant to the commerce clause unless it is affirmatively shown that a "multiple burden" on interstate commerce exists. *Northwestern States Portland Cement Co. v. Minnesota, Williams v. Stockham Valves*, 358 U. S. 450 (1959).

> "* * * There is nothing to show that multiple taxation is present. We cannot deal in abstractions. In this type of case the taxpayers must show that the formula places a burden upon interstate commerce in a constitutional sense. This they have failed to do." *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, at p. 463.

The burden is upon the taxpayer to show the disassociation between in-state business activities and the gross proceeds which are included in the measure of taxation. *Norton v. Dept. of Revenue, supra.*

When these legal principles are applied to the facts of the instant case there can be no other conclusion than that "multiple burdens" do not exist.

The tax in question impinges only on local business activities. The measure of the tax includes only those sales attributable to those activities. No other sales are included in the tax base.

Appellant has never attempted to establish a formula for determining the percentage of each sale occurring in the State of Washington that is attributable to its in-state business activities. Thus, applying the rule of the *Norton* case, *supra*, appellant has failed to disassociate any porton of the sales in question from its in-state activities.

It is alleged that a risk of multiple burdens exists because other states might enact a similar tax, measured by the same gross receipts as Washington uses in measuring its tax. See appellant's jurisdictional statement, p. 13. But it is never shown how this could result. No state could levy a tax upon the business activities taking place in Washington. Furthermore, no other state could impose a tax measured by the same gross receipts. *Gwin, White & Prince v. Henneford*, 305 U. S. 434 (1939); *J. A. Adams Mfg. Co. v. Storen*, 304 U. S. 307 (1938).

And there is therefore no more a risk of "multiple burdens" in this case than there was in the *Norton* case, *supra*. In short, there is no factual or legal basis that can establish the existence of "multiple burdens."

On this general question of multiple burdens, the following analysis by Mr. Justice Rutledge is persuasive, and, in fact, seems to have been followed by this Court. (Compare, on the one hand, *Gwin, White & Prince v. Henneford*, *supra*, and *J. A. Adams Mfg. Co. v. Storen*, *supra*, with *Norton v. Dept. of Revenue*, *supra*.)

> "If in this case it were necessary to choose between the state of origin and that of market for the exercise of exclusive power to tax, or for requiring allowance of credit in order to avoid the cumulative burden, in my opinion the choice should lie in favor of the state of market rather than the state of origin.[1] The former is the state where the goods must come in competition with those sold locally. It is the one where the burden of the tax necessarily will fall equally on both classes of trade. To choose the tax of the state of origin presents at least some possibilities that the burden it imposes on its local trade, with which the interstate traffic does not compete, at any rate directly, will be heavier than that placed by the consuming state on its local business of the same character. If therefore choice has to be made, whether as a matter of exclusive power to tax or as one of allowing credit, it should be in favor of the

---

[1] Cf. Powell, New Light on Gross Receipts Taxes (1940) 53 Harvard L Rev 909; Lockhart, The Sales Tax in Interstate Commerce (1939) 52 Harvard L Rev 617; compare Gwin, White & Prince v. Henneford, 305 US 434, 83 L ed 272, 59 S Ct 325; J. D. Adams Mfg. Co. v. Storen, 304 US 307, 82 L ed 1365, 58 S Ct 913, 117 ALR 429.

state of market or consumption as the one most certain to place the same tax load on both the interstate and competing local business. Hence, if the risk of taxation by both states may be said to have the same constitutional consequences, under the commerce clause as taxation in actuality by both, the Arkansas [the market state] tax, rather than the power of Tennessee to tax, should stand.

"It may be that the mere risk of double taxation would not have the same consequences, given always of course a sufficient due process connection with the taxing states, that actual double taxation has, or may have, for application of the commerce clause prohibition. Risk of course is not irrelevant to burden or to the clogging effect the rule against undue burden is intended to prevent. But in these situations it may be doubted, on entirely practical grounds, that the mere risk Tennessee may apply its taxing power to these transactions will have any substantial effect in restraining the commerce such as the actual application of that power would have. In any event, whether or not the choice must be made now or, as I think, has been made, it should go in favor of Arkansas [the market state], not Tennessee." *International Harvester v. Dept. of Treasury*, 322 U. S. 340, at p. 361 (1944) (concurring opinion).

E. THERE IS NO SHOWING THAT THE TAX PROVIDES ANY COMMERCIAL ADVANTAGE TO INTRASTATE BUSINESS. [Appellant's Question No. 2; Appellees' Question No. 3]

It is true that Washington, by endeavoring to equalize the tax burden among all who engage in business activities within the state, has structured its tax statutes so that no one is required to pay both a manufacturing tax and a wholesaling tax with

respect to goods that a taxpayer both manufactures and wholesales within the state. See *Crown Zellerbach Corp. v. State*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954). Those who manufacture in the State of Washington and then sell products elsewhere are required to pay but one tax. Those who wholesale in Washington products grown or fabricated elsewhere pay but one tax, and those who manufacture locally for local markets are required to pay but one tax; so that local commerce does not have to bear the discriminatory burden of double taxation where competitors operating multi-state enterprises only paid one.

Appellant attempts to build an argument on the fact that Washington fails to tax local manufacturer-wholesalers twice. It is not enough, says appellant, that local wholesalers pay the same tax as we; in addition, says appellant, local manufacturers must pay the same tax as we pay to other taxing jurisdictions on our manufacturing operations; otherwise we are being discriminated against.

A large, multi-state operator like appellant cannot avoid occasioning taxes in several states. This is an accepted part of commercial life. There are license taxes and property taxes and franchise taxes and excise taxes of varying hues and hurts. If appellant's allegations are true, despite the absence of proof in the record, that a manufacturing tax is paid in St. Louis, there still can be no discrimination against interstate commerce—Washington's tax is a

wholesaling tax. The fact that appellant pays a manufacturing tax in St. Louis is no more relevant than the fact that it pays license taxes, and property taxes, and franchise taxes in other states. There is no multiple burden unless repeated exactions of the same nature occur. *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938).

THE QUESTIONS ARE NOT SUBSTANTIAL AS A MATTER OF PUBLIC IMPORTANCE

This court has stated in *Norton v. Department of Revenue*, 340 U. S. 534 (1951), *supra*, at 537:

> "Where a corporation chooses to stay at home in all respects except to send abroad advertising or drummers to solicit orders which are sent directly to the home office for acceptance, filling and delivery back to the buyer, it is obvious that the state of the buyer has no local grip on the seller. * * *"

This is the law as enunciated by this Court; and this is the law as applied by the Washington state supreme court in this case.

Appellant would have this Court believe that its activities in the State of Washington can be equated to those of simple drummers. Appellees, following the decision of the Washington state supreme court, submit that, on the contrary, the regular, all-pervasive, and continuous activities of General Motors personnel in the state show that General Motors is just as permanently established and localized in the state by the operations giving rise to the tax in question, as it is by its various offices and warehouses within the state.

The heart of appellant's argument for plenary review by this court is the proposition that the decision of the Washington state supreme court "* * * affects every business which does not have a participating office in the state but which ships to customers located within the state and which has any presence therein, however slight, * * *" (Juris. St., p. 19.) Consideration of the facts in this case shows that this is a gross exaggeration.

Appellant speaks of the "novel principle of this decision." (Juris. St., p. 20.) If there is any novelty or uniqueness to be found in this decision, it is because of the novel and unique character of General Motors' merchandising activities, and not because of the principles applied.

Appellant seems to consider P. L. 86-272 (73 Stat. 555, 15 U. S. C. § 381-84) of some relevance (Juris. St., p. 22). This law regulating state jurisdictions to impose net income taxes, is of some relevance, appellees agree, but not for the reasons given by appellant. It is relevant because it shows that any decision by this Court in this case could be applicable only to those relatively few states which have a tax similar in nature to the Washington tax here in question; any decision in this case could have no applicability to the much greater number of states whose taxing power falls within the scope of P. L. 86-272.

Appellant emphasizes the financial impact which this decision might have upon its operations

in the State of Washington. "* * * The accumulated liability for all Divisions for the ten years since that time [1953] runs to many hundreds of thousands of dollars. * * *"

Over two-thirds of the $320,000 mentioned by appellant is attributable to Chevrolet Class A sales, which involved participation by a Seattle branch office. Since January, 1954, there has been a Chevrolet Seattle zone office which covers the Chevrolet transactions formerly covered by the Seattle branch office; and appellant is and has been paying taxes on transactions attributable to this Seattle zone office.

Thus, it is clear that the decision below will have nowhere near the financial impact on appellant which the appellant, or the press release referred to, would suggest.

CONCLUSION

The unanimous decision of the Court below is in harmony with the principles of law announced by the decisions of this Court and the authorities discussed hereinabove. Appellees also submit that, in view of the relatively unique factual situation involved, and the general pattern of tax laws throughout the states, no question of substantial public importance is presented. This appeal, therefore, presents no substantial federal question, and should be dismissed.

Respectfully submitted,

JOHN J. O'CONNELL,
Attorney General of the State of Washington,
Temple of Justice, Olympia, Washington.

JOHN W. RILEY,
Special Assistant Attorney General,
535 Central Building, Seattle, Washington,

JAMES A. FURBER,
TIMOTHY R. MALONE and
LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Building, Olympia, Washington,

Attorneys for Appellees.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 6 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OPPOSING MOTION TO DISMISS

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit 2, Michigan;
DEWITT WILLIAMS,
1440 Washington Building,
Seattle 1, Washington,
Attorneys for Appellant.

ROSLING, WILLIAMS, LANZA & KASTNER,
Seattle, Washington,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

TABLE OF CASES

	Page
Halliburton Oil Well Cementing Co. v. Reily, No. 24, October Term 1962, U.S.S.Ct.	6
McLeod v. J. E. Dilworth Co., 322 U.S. 327 (1944)	5
Nippert v. City of Richmond, 327 U.S. 416 (1946)	5
Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450 (1959)	3
Norton Company v. Department of Revenue, 340 U.S. 534 (1951)	2
Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951)	4
West Publishing Co. v. McColgan, 328 U.S. 823 (1946)	3
Western Livestock v. Bureau of Revenue, 303 U.S. 250 (1938)	4
Wisconsin et al. v. J. C. Penney Co., 311 U.S. 435 (1940)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 1071

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OPPOSING MOTION TO DISMISS

Appellant, pursuant to Rule 16(3) of the Rules of the Supreme Court of the United States, respectfully submits the following brief opposing the Appellees' Motion to Dismiss.

Very little need be said in opposition to the Appellees' Motion to Dismiss for the reason that their arguments were fully anticipated in the Jurisdictional Statement.

Facts: The counterstatement of facts, especially Motion 8-11, does not serve, as asserted (p. 7) to "identify the business activities engaged in within the State of Washington by General Motors". On the contrary, it lumps together (1) activities within the State of General Motors related to the taxed transactions, which alone are pertin-

ent, with (2) activities of General Motors without the State, (3) activities within the State of other Divisions and subsidiaries of General Motors, wholly unrelated to these transactions and separately taxed, and even (4) activities of General Motors' customers. General Motors' pertinent activities within the State are much better "identified" in the Statement of the Case in our Jurisdictional Statement, and particularly in the last paragraph on p. 7, the first paragraph on p. 8, and the first paragraph on p. 9; and again in the Argument at the top of p. 12.

Questions: As restated by Appellees, the Questions incorporate non-factual assumptions. For example, it is assumed on p. 15 that the district managers' functions include "responsibility to maintain the required dealer organization" and "securing orders". The appointment of dealers (who are independent of each other and not an "organization") is a function of the zone manager at Portland. Juris. St. 7. Orders are not ordinarily solicited at all and are received, accepted and filled outside the State. Juris. St. 8, 9. The trial court so found as a fact. Finding of Fact XX.

Argument—Introduction: Once again, most of the activities referred to on p. 17 are conducted in Oregon and other states, not Washington.

Norton Company v. Department of Revenue, 340 U.S. 534: We agree with Appellees' statement (p. 18) that this Court's decision in *Norton* is controlling. Juris. St. 11, 16, 18, 21, 22. We repeat that the State court's decision here is directly contrary to the holding in *Norton*. In that case, the taxpayer operated within Illinois a retail store. The Illinois court held all of Norton's transactions taxable because of the presence of that store. This Court reversed as to transactions which had no connection with the store except

the services of engineers working out of it, and declined to reverse as to transactions which utilized the store in some more substantial way because they were not satisfactorily "dissociated" from the admittedly taxable business of the store. The Court said (pp. 538-539):

> "This corporation has so mingled taxable business with that which it contends is not taxable that it requires administrative and judicial judgment to separate the two. We conclude that, in the light of all the evidence, the judgment attributing to the Chicago branch income from all sales that utilized it either in receiving the orders or distributing the goods was within the realm of permissible judgment."
>
> . . . . . .
>
> "The only items that are so clearly interstate in character that the State could not reasonably attribute its proceeds to the local business are orders sent directly to Worcester by the customer and shipped directly to the customer from Worcester. Income from those we think was not subject to this tax."

Thus, the only actual holding of *Norton* is that transactions which are not mixed up with a local business cannot be subjected to this type of tax. That is the holding which controls here.

West Publishing Co. v. McColgan, 328 U.S. 823: This case, cited on p. 18, was an apportioned net income tax case, and has no application here, as explained by this Court in *Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc.,* 358 U.S. 450. Juris. St. 21.

Wisconsin v. J. C. Penney Co., 311 U.S. 435: General Motors' activities come precisely within the limits which the

quotation on p. 20 indicates would be a denial of due process. Juris. St. 17.

Undue Burden: Appellees do not even attempt to argue that General Motors' activities are not part of interstate commerce. It is surprising that they cite, on p. 23, *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602, in support of their claim that the privilege of engaging in such activities can be taxed. *Spector* holds that it cannot, even by a properly apportioned tax. Juris. St. 11. None of the cases cited stands for that proposition. Juris. St. 3, 11, 14, 20, 21.

Multiple Burden: Another surprising citation is that of *Western Livestock v. Bureau of Revenue*, 303 U.S. 250, on p. 25. Western Livestock was fully taxable in New Mexico, although its customers were in other states, because its principal activities were in New Mexico; its contacts, other than customers, in other states were minimal, and it was not taxable in those other states. The fact situation was exactly the reverse of ours. If Washington can lay an unapportioned gross receipts tax on General Motors because of the incidents of its wholesale selling which take place in Washington, *a fortiori* Oregon and California can do so, where many more incidents of the same wholesaling occur—receipt, acceptance and filling of orders, shipment of goods, passage of title, billing and receipt of payment, appointment of dealers, analysis of dealers' statements, etc.

The Motion would like to obscure the substantial constitutional point raised in our First Question (Juris. St. 3-4, 11-13) as to whether a state may fragmentize an interstate transaction into "local incidents" and measure a tax on such incidents by the unapportioned gross proceeds of the whole business. This Court dealt with that same ques-

tion in *Nippert v. City of Richmond*, 327 U.S. 416, wherein it said (p. 423):

> "If the only thing necessary to sustain a state tax bearing upon interstate commerce were to discover some local incident which might be regarded as separate and distinct from 'the transportation or intercourse which is' the commerce itself and then to lay the tax on that incident, all interstate commerce could be subjected to state taxation and without regard to the substantial economic effects of the tax upon the commerce. For the situation is difficult to think of in which some incident of an interstate transaction taking place within a State could not be segregated by an act of mental gymnastics and made the fulcrum of the tax."
>
> • • • • • •
>
> "This is not to say that the presence of so-called local incidents is irrelevant. On the contrary the absence of any connection in fact between the commerce and the state would be sufficient in itself for striking down the tax on due process grounds alone; and even substantial connections, in an economic sense, have been held inadequate to support the local tax."

Justice Rutledge's view, quoted at pp. 27-28, is from his *dissent* in *McLeod v. J. E. Dilworth*, 322 U.S. 327, and related to a *sales* tax. We agree with the economic philosophy therein expressed, that consumer taxes should be paid to the state of the consumer. It has no application to franchise taxes, which should be paid to the state where the franchise is exercised and protected.

Discrimination: The discriminatory effect of the interplay of the dual taxes imposed on manufacturing and selling and the related exemptions cannot be brushed off as Appellees attempt at pp. 28-30. Juris. St. 13-15. This has

been emphasized by this Court in its most recent state tax decision, *Halliburton Oil Well Cementing Co. v. Reily*, No. 24 at this term of Court, decided May 13, 1963, in which just such a practical working out of a sales and use tax statute with certain exemptions, fair on its face, was found to discriminate unconstitutionally against interestate commerce.

Importance: Appellees' argument at pp. 30-32 that this case is not of sufficient importance and lacks sufficient novelty to merit review by this Court is fully answered in our Jurisdictional Statement, particularly pp. 19-23, and in the Motions for Leave To File and Briefs of the five *amici curiae*, each of which is a trade association representing many taxpayers.

Conclusion: This Brief and the Jurisdictional Statement are not, except incidentally, arguments on the merits. We believe, however, that, together with the five Motions and Briefs of *amici curiae*, they thoroughly establish that the case is of such constitutional substance and novelty and of such economic importance that it should be decided by this Court after full hearing on the merits.

Respectfully submitted,

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit 2, Michigan;

DEWITT WILLIAMS,
1440 Washington Building,
Seattle 1, Washington,
Attorneys for Appellant.

ROSLING, WILLIAMS, LANZA &
KASTNER,
Seattle 1, Washington,
Of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 10 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR APPELLANT

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit, Michigan, 48202;
DEWITT WILLIAMS,
1440 Washington Building,
Seattle, Washington, 98101,
Attorneys for Appellant.

WILLIAMS, LANZA, KASTNER & GIBBS,
Seattle, Washington,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
First Question—Interstate Commerce	2
Second Question—Interstate Commerce	3
Third Question—Due Process	4
Statutes and Constitutional Provisions	5
Statement of the Case	5
Summary of Argument	11
Economic Aspects	11
First Question—Interstate Commerce	13
Second Question—Interstate Commerce	15
Third Question—Due Process	16
Argument	17
Economic Aspects	17
Three Types of Taxes	17
Basic Unsoundness of This Tax	19
The "Market State" Concept	21
"Market State" v. "Producer State"	24
Impact of the Decision	31
Effect on Local Government and Competition	32
First Question—Interstate Commerce	34
A. The tax is invalid as a levy on the privilege of engaging in interstate commerce	34

Page

B. The tax is invalid as a levy on unapportioned gross receipts from interstate commerce 39

C. The tax is invalid because the interstate commerce involved is exposed to unapportioned multiple burdens..... 42

D. The tax is valid only when applied to a local business, realistically separable from interstate commerce 45

E. The added factor in the transactions of the second class does not make them taxable.. 54

F. Important Distinctions 55

Second Question—Interstate Commerce..... 56

Third Question—Due Process..... 61

Conclusion 68

Appendix A—Chapter 82.04 of the Revised Code of Washington 1a

B—Chapter 13 of the Revised Code of City of St. Louis (1948)..... 5a

C—Public Law 86-272, 73 Stat. 555 (15 U.S.C. §§381-384) 7a

D—Constitutional Provisions 10a

E—Excerpt from Illinois Retailers' Occupation Tax Regulations..... 11a

CITATIONS

Cases:

Adams Express Company v. Ohio, 166 U.S. 185 (1897) 33

Adams Manufacturing Co. v. Storen, 304 U.S. 307 (1938) 40, 41, 57

Cases (continued): **Page**

Alpha Portland Cement Company v. Massachusetts, 268 U.S. 203 (1925)...15, 35, 38, 39, 49, 51, 52, 68
American Manufacturing Company v. City of St. Louis, 250 U.S. 459 (1919)..... 45, 56
Armco Steel Corporation v. Michigan, 102 N.W. 2d 552 (1960); app. dis. 364 U.S. 337 (1960)..... 33
Asher v. Texas, 128 U.S. 129 (1888)..... 39
Automatic Voting Machine Corp. v. Daley, 409 Ill. 438, 100 N.E. 2d 591 (1951)..... 63
Best & Company, Inc. v. Maxwell, 311 U.S. 454 (1940)..... 39
B. F. Goodrich Co. v. State of Washington, 38 Wn.2d 663, 231 P.2d 325 (1951)...21, 48, 52, 53, 54, 58
Bowers v. Kerbaugh-Empire Company, 271 U.S. 170 (1926)..... 24
Brennan v. Titusville, 153 U.S. 289 (1894)..... 39
Caldwell v. North Carolina, 187 U.S. 622 (1903)... 39
Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653 (1948)..... 33
Cheney Brothers Company v. Massachusetts, 246 U.S. 147 (1918).....35, 38, 39, 49, 52
Columbia Steel Co. v. State of Washington, 30 Wash.2d 658, 192 P.2d 976 (1948)..... 57
Commissioner v. Culbertson, 337 U.S. 733 (1949).. 24
Cooney v. Mountain States Telegraph Co., 294 U.S. 384 (1935)..... 47
Corson v. Maryland, 120 U.S. 502 (1887)..... 39
Crenshaw v. Arkansas, 227 U.S. 389 (1913)..... 39
Crew Levick Company v. Pennsylvania, 245 U.S. 292 (1917)..... 41
Crown Zellerback Corporation v. State of Washington, 45 Wash.2d 749, 278 P.2d 305 (1954)... 57
Davis v. Virginia, 236 U.S. 697 (1915)..... 39

Cases (continued): Page

Delaware Railroad Tax, 18 Wall. 206 (1873)..... 66
Doyle v. Mitchell Bros. Co., 247 U.S. 179 (1918).., 24
Dozier v. Alabama, 218 U.S. 124 (1910)..... 39
Eisner v. Macomber, 252 U.S. 189 (1920)..... 24
Fargo v. Michigan, 121 U.S. 230 (1887)..... 39, 41
Field Enterprises, Inc. v. State of Washington, 47 Wn.2d 852, 289 P.2d 1010 (1955), 352 U.S. 806 (1956) 54
Fisher's Blend Station, Inc. v. State Tax Commission, 297 U.S. 650 (1936)..... 39, 41
Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939) 33
Freeman v. Hewit, 329 U.S. 249 (1946).....16, 20, 40, 57, 60, 69
Galveston, Harrisburg and San Antonio Railway Company v. Texas, 210 U.S. 217 (1908)..... 41
General Motors Corporation v. State of Washington, 60 Wn.2d 862, 376 P.2d 843 (1962), 374 U.S. 824 (1963) (this case)..... 1, 2
General Trading Co. v. State Tax Commission, 322 U.S. 335 (1944)..... 23
Gulf Oil Corp. v. Joseph, 307 N.Y. 342, 121 N.E.2d 360 (1954) 63
Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 (1939) 14, 40, 41, 42, 54, 57, 65, 66, 69
Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963).....16, 58, 69
Hans Rees' Sons, Inc. v. North Carolina, 283 U.S. 123 (1931) 17, 64, 69
Hays v. The Pacific Mail Steamship Company, 17 How. 596 (1854)..... 66
Henneford v. Silas Mason Co., Inc., 300 U.S. 577 (1937) 33
International Harvester Co. v. Department of Treasury, 322 U.S. 340 (1944)..... 23

Cases (continued): Page

International Shoe Co. v. State of Washington, 326 U.S. 310 (1945) 16, 64, 67
Joseph v. Carter & Weeks Stevedoring Co., 330 U.S. 422 (1947) 40
Los Angeles, The City of, v. Belridge Oil Company, 48 Cal.2d 320, 309 P.2d 417 (1957) 63
M'Culloch v. Maryland, 17 U.S. 315 (1819) 36
McLeod v. J. E. Dilworth Co., 322 U.S. 327 (1944) 17, 23, 49, 51, 62, 69
Memphis Steam Laundry Cleaner, Inc. v. Stone, 342 U.S. 389 (1952) 35, 38, 39, 49, 57
Merchants' Loan & Trust Company v. Smietanka, 255 U.S. 509 (1921) 24
Meyer v. Wells, Fargo & Company, 223 U.S. 298 (1912) 41
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954) 57
Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954) 17, 62
National Carbide Corp. v. Commissioner, 336 U.S. 422 (1949) 24
Nelson v. Sears, Roebuck & Co., 312 U.S. 359 (1941) 21
New York, Lake Erie & Western Railroad Company v. Pennsylvania, 153 U.S. 628 (1889) ..17, 66, 69
Nippert v. City of Richmond, 327 U.S. 416 (1946) 11, 14, 39, 43, 49, 51, 52, 57, 58, 69
Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450 (1959) 13, 20, 33, 35, 38, 39, 54, 57, 68
Norton Company v. Department of Revenue, 340 U.S. 534 (1951) 14, 21, 22, 32, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 63, 65, 69

Cases (continued): Page

Philadelphia and Southern Steamship Company v. Pennsylvania, 122 U.S. 326 (1887) 39, 41
Puget Sound Stevedoring Co. v. State Tax Commission, 302 U.S. 90 (1937) 39
Railroad Company v. Jackson, 7 Wall. 262 (1868) 66
Railway Express Agency, Inc. v. Virginia, 347 U.S. 359 (1954) 40
Real Silk Hosiery Mills v. City of Portland, 268 U.S. 325 (1925) 39
Rearick v. Pennsylvania, 203 U.S. 507 (1906) 39
Robbins v. Shelby County Taxing District, 120 U.S. 489 (1887) 39
Rogers v. Arkansas, 227 U.S. 401 (1913) 39
St. Louis v. The Ferry Co., 11 Wall. 423 (1870) ... 66
Spector Motor Service Inc. v. O'Connor, 340 U.S. 602 (1951) 13, 35, 38, 39, 49, 68
State Tax on Foreign-held Bonds, 15 Wall. 300 (1872) 66
Stewart v. Michigan, 232 U.S. 665 (1914) 39
Stockard v. Morgan, 185 U.S. 27 (1902) 39
Stoutenburgh v. Hennick, 129 U.S. 141 (1889) 39
Stratton's Independence, Limited v. Howbert, 231 U.S. 399 (1913) 24
United States Steel Corporation v. Gerosa, 7 N.Y. 2d 454, 166 N.E.2d 489 (1960) 63
Western Live Stock v. Bureau of Revenue, 303 U.S. 250 (1935) 41, 45
West Point Wholesale Grocery Co. v. City of Opelika, 354 U.S. 390 (1957) 14, 42, 49
Weyerhauser Sales Co. v. Tax Commission, 30 Wn.2d 947, 192 P.2d 979 (1948) 57
Wiloil Corporation v. Pennsylvania, 294 U.S. 169 (1935) 51
Wisconsin v. J. C. Penney Co., 311 U.S. 435 (1940) 12, 17, 63, 69

Statutes, Ordinances and Regulations: Page

Ill. Ret. Occ. Tax Regs. 50, 53, 11a
Ill. Rev. Stat. 1949, c. 120, §441 45
Revised Code of the City of St. Louis, Chapter 13, 1948 ..... 5, 16, 56, 5a
Revised Code of Washington, Title 82:
RCW 82.04.040 ..... 5, 14, 1a
RCW 82.04.060 ..... 5, 1a
RCW 82.04.070 ..... 5, 14, 1a
RCW 82.04.220 ..... 5, 36, 68, 2a
RCW 82.04.240 ..... 5, 15, 56, 2a
RCW 82.04.270 ..... 5, 14, 15, 56, 68, 2a
RCW 82.04.295 ..... 5, 3a
RCW 82.04.440 ..... 5, 15, 56, 58, 3a
RCW 82.04.500 ..... 5, 13, 19, 23, 4a
44 Stat. 223; 12 U.S.C. §548 (R.S. 5219) 33
62 Stat. 929; 28 U.S.C. §1257(2) 2
63 Stat. 104; 28 U.S.C. §2101(c) 2
73 Stat. 555; 15 U.S.C. §381-384 (P.L. 86-272) 5, 7a

United States Constitution:

Art. I, §8, cl. 3 ..... 5, 10a
Fourteenth Amendment 5, 10a

Miscellaneous:

Beaman, Walter H., "Paying Taxes to Other States", The Ronald Press Company, New York 1963, Library of Congress, #63-9292.... 50
Harriss, Professor C. Lowell, "Interstate Apportionment of Business Income", 49 Amer. Econ. Rev. Vol. 3, 398, 399-400 (1959) 29
Hartman, Professor Paul J., "State Taxation of Interstate Commerce", Dennis & Co., Inc., 1953, Library of Congress, #53-11622 at p. 15..... 66

Page

Ratliff, Professor Charles E., Jr., "Interstate Apportionment of Business Income for State Income Tax Purposes", Univ. of North Carolina Press 1962, at p. 115 30

Studenski, Professor Paul, "The Need for Federal Curbs on State Taxes on Interstate Commerce: An Economist's Viewpoint", 46 Va.L.R. 1121 (1960) 28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR APPELLANT

OPINIONS BELOW

The opinion of the Superior Court of the State of Washington for Thurston County (R. 21-22) is not officially reported. The *en banc* opinion of the Supreme Court of the State of Washington (R. 439-454) is reported at 60 Wn. 2d 862, 376 P. 2d 843.

JURISDICTION

The final judgment of the Washington Supreme Court, the highest state court in which a decision could be had, was entered on January 7, 1963 (R. 455). On March 6, 1963, notice of appeal to this Court (R. 456-458) was filed in the Washington Supreme Court pursuant to Rule 11(3) of this Court and 63 Stat. 104, 28 U.S.C. §2101(c). On May 3, 1963, the jurisdictional statement was filed and the case docketed in this Court pursuant to Rule 13. Probable jurisdiction was noted on June 17, 1963 (R. 459), 374 U.S. 824. The jurisdiction of this Court rests on 62 Stat. 929, 28 U.S.C. §1257(2).

QUESTIONS PRESENTED[1]

(1) Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Commerce Clause of the United States Constitution when applied to the entire gross receipts from sales of goods manufactured and sold wholly without the state by a foreign corporation to retail dealers located within the state, when that corporation's in-state business activities with respect to such dealers consist only of checking on the performance by such dealers of their Dealer Selling Agreements with said foreign corporation and assisting such dealers, principally by advice, with respect to their conduct of their retail businesses?

Subsidiary to this question are the following:

---

[1] Repeated *verbatim* from Jurisdictional Statement.

(a) Is such a tax a prohibited exaction on the privilege of engaging in interstate commerce when there is no local office in any way related to the transactions upon which the tax is based, there is no separable intrastate commerce, and the only in-state aspects are the locations of the customers (retail dealers), national advertising placed outside the state, and regular contacts with the customers at their places of business by traveling representatives, some of whom reside in the state (hereinafter referred to as transactions of the first class)?

(b) Does the Commerce Clause prohibit such an exposure of the interstate commerce to the risk of multiple burdens and as to some of the transactions to actual double taxation?

(c) Are the answers to (a) and (b) the same for other transactions which are in all respects similar except for the addition of an office in the state staffed by one man (and his secretary) whose duties are to give additional advice to dealers in all of Alaska and parts of Washington and Idaho and to assist them primarily by expediting shipments in periods of short supply (hereinafter referred to as transactions of the second class)?

(2) Is a Washington tax measured by unapportioned gross receipts which is laid on both the privilege of manufacturing and the privilege of selling, but exempts from tax as manufacturers those who pay the tax as sellers, repugnant to the Commerce Clause of the United States Constitution when applied to an out-of-state manufacturer, because it assures only a single tax on a combination of local manufacture and sale while exposing combinations of local manufacture and out-of-state sale and out-of-state

manufacture and local sale to multiple burdens and double taxation, thus providing a direct commercial advantage to intrastate business?

(3) Is a Washington tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts, repugnant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution when applied to the entire gross receipts of a foreign corporation from sale of goods manufactured and sold wholly without the state to retail dealers located within the state when that manufacturer's in-state activities with respect to such dealers consist only of checking on the performance by such dealers of their Dealer Selling Agreements with said foreign corporation and assisting such dealers, principally by advice, with respect to their conduct of their retail businesses?

Subsidiary to this question are the following:

(a) Is such a tax an unwarranted projection of state power beyond its borders and the taking of property without due process of law when it is measured by the unapportioned gross receipts from manufacture and sale conducted wholly without the state, with only those in-state aspects described in Question (1)(a) and, as to some transactions, in Question (1)(c)?

(b) Is such a tax so measured grossly disproportionate to the protection and benefits conferred by the state upon the business when the only in-state aspects to be protected and benefited are those described in Question (1)(a) and, as to some transactions, in Question (1)(c)?

STATUTES AND CONSTITUTIONAL PROVISIONS

The tax here involved is imposed by Title 82, Chapter 82.04, of the Revised Code of Washington (RCW). Pertinent portions of RCW sections 82.04.040, 82.04.060, 82.04.070, 82.04.220, 82.04.240, 82.04.270, 82.04.295, 82.04.440, and 82.04.500 with volume and page citations to the official edition are set forth in Appendix A hereto (*infra*, pp. 1a-4a).

Sections 31, 32 and 51 of Chapter 13 of the Revised Code of the City of St. Louis, 1948 are set forth in Appendix B hereto (*infra*, pp. 5a-6a).

Public Law 86-272, 73 Stat. 555 (15 U.S.C. §381-384) is set forth in Appendix C hereto (*infra*, pp. 7a-9a).

Art. I, §8, cl. 3 of the Constitution of the United States (Commerce Clause) and the Due Process Clause of the Fourteenth Amendment to that Constitution are set forth in Appendix D hereto (*infra*, p. 10a).

STATEMENT OF THE CASE

This is an appeal by General Motors Corporation from a final judgment of the Washington Supreme Court (R. 455) sustaining assessments of Washington business and occupation tax, purportedly imposed for the privilege of "engaging within this state in the business of making sales at wholesale," RCW 82.04.270. The tax was levied on the unapportioned gross receipts derived by General Motors from wholesale sales of motor vehicles, parts and accessories manufactured and sold wholly without the state and shipped to Chevrolet, Pontiac and Oldsmobile retail

dealers located in the state (R. 47-51). The amounts of gross receipts included in the assessment base and the taxes and interest related thereto have been settled by stipulation of the parties (R. 6-12, 48-51). The Appellees are the State of Washington and the Tax Commissioners of the State of Washington (R. 47).

The essential facts are incorporated in the statement of "Questions Presented". Less cryptically, they are:

General Motors manufactures, in California, Missouri and Michigan, but not in Washington, motor vehicles and parts and accessories therefor which it sells at wholesale to independent dealers, including dealers in Washington. The dealers send their orders to zone offices located in Portland, Oregon. Orders are accepted there or at the factories and sales are completed by shipments f.o.b. the factories. The zone offices assist the dealers with advice, and for that purpose have district managers, working out of the zone offices, who regularly call on dealers in defined territories in which the district managers reside, including some in Washington. District managers do not normally solicit or handle orders. There was no General Motors office or place of business in Washington that had any connection with the first class of transactions. As to the second class, there was a one-man office in Seattle which assisted dealers in Alaska and parts of Idaho and Washington, principally by expediting deliveries. (R. 12-19, 46-61)

While the foregoing states all the facts which we consider essential to the issues, the following more detailed statement may provide helpful background.

General Motors is a Delaware corporation qualified to do business within the State of Washington (R. 47). It owns and operates factories for the manufacture of auto-

mobiles, trucks, parts and accessories for sale at wholesale to independent retail dealers, including a number of such dealers located in Washington (R. 47-51, 55). No manufacturing facilities are located in Washington (R. 13, 47-48).

General Motors conducts much of its business through Divisions, not separately incorporated, which operate substantially independently of one another (R. 13, 47, 48). Some of these Divisions maintain offices in Washington and pay without dispute the tax on the transactions passing through such offices (R. 14). This appeal involves the transactions of only Appellant's Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions and the taxability of gross receipts derived from their sales to Chevrolet, Pontiac and Oldsmobile dealers located within Washington (R. 48-51). All products involved in these transactions were manufactured, sold and delivered outside the state and shipped into the state pursuant to orders from the dealers (R. 47-48, 49). The orders were received at and processed through zone offices and a parts warehouse in Portland, Oregon, and the sales were completed by delivery and shipment from factories (sometimes warehouses) located outside the State of Washington, including factories at Oakland and South Gate, California; St. Louis, Missouri; and Lansing and Pontiac, Michigan; and a parts warehouse at Portland, Oregon (R. 14, 17-18, 47-48, 54, 56-57).

The field sales organizations of the Chevrolet, Pontiac and Oldsmobile Divisions are similar in most respects (R. 14). Each Division maintains a zone office in Portland, Oregon (R. 14-15). The geographical territory of each "Portland zone" includes Washington, Oregon and Alaska and variously parts of Idaho, Montana and Wyoming (R. 15, 53). The zone manager appoints dealers in appropriate

locations throughout his territory and (in Portland) executes with each a Dealer Selling Agreement (R. 16, 48). Thereafter, the zone manager and his assistants advise the dealer in the management of his dealership and check his compliance with the Dealer Selling Agreement, particularly through the efforts of a "district manager" (R. 16-17, 55).

A district manager ordinarily resides within his assigned territory, but has no office other than the zone office in Portland (R. 17, 56). A district manager does not accept or fill orders, approve credit, receive payment or make delivery (R. 55). His function includes serving as the zone manager's direct contact with the dealer at his place of business, receiving from him his complaints, observing his operations, reporting thereon to the zone office, and passing on to him such advice and counsel as the zone office can make available (R. 17).

Orders for motor vehicles are sent by the Washington retail dealers to the zone offices in Portland, Oregon (R. 17-18, 56). The orders are accepted (or rejected) at the zone office or factory, and if accepted are filled by shipment from the factory by common carrier, f.o.b. the factory (R. 18, 56-57). Payment is received and delivery is made at the factory (R. 18, 47-48, 56-57). By reason of the nature of General Motors' business, solicitation of orders is not a necessary or usual step in its sales procedures (R. 54).

The zone offices of Pontiac and Oldsmobile Divisions each had about twenty assigned personnel (R. 15). The Chevrolet office was somewhat larger (R. 18). Of these, Pontiac had never any more than three in Washington, Oldsmobile no more than six, and Chevrolet no more than seventeen (R. 5).

General Motors Parts Division warehouses and sells and ships to dealers parts and accessories for Chevrolet, Pon-

tiac, and Oldsmobile vehicles (R. 18, 59-60). It has a warehouse at Portland, Oregon, and another at Seattle, Washington, which stock different classes of items (R. 18-19, 59-60). Items carried by the Portland warehouse are ordered by the dealers directly from Portland, without any participation by the Seattle warehouse (R. 18-19, 56, 59-60). The Division has no field personnel visiting dealers (R. 446). General Motors has voluntarily paid and does not dispute the tax on the transactions of the Seattle warehouse (R. 19). Tax on gross receipts from sales from the Portland warehouse, not the Seattle warehouse, is contested here (R. 19, 50-51).

The Washington court divided Appellant's transactions into two classes. The first class included all Oldsmobile, Pontiac and General Motors Parts Division transactions, and part of the Chevrolet Division transactions, denominated Chevrolet Class "B", which consisted of sales through the Chevrolet Portland zone office to Chevrolet dealers located in the nine southern counties of the State of Washington (R. 21-22, 49-51, 439-454). The second class of transactions, denominated Chevrolet Class "A", consisted of sales to Chevrolet dealers in the balance of the State (R. 21-22, 50, 439-454). The foregoing description is applicable to both classes of transactions.

No office of Appellant's in the state had any contact of any kind with the transactions in the first class and every step therein on Appellant's part, from receipt and acceptance of an order to delivery of product and receipt of payment was performed at an office, warehouse or factory outside the state (R. 47-48, 54, 56). The respective transactions of the Chevrolet, Oldsmobile and Pontiac Divisions were in no way related to one another, and the transactions of the Portland warehouse of the Parts Division were in no way related to its Seattle warehouse (R. 56).

The second class of transactions, Chevrolet Class "A", consisted of sales through the Chevrolet Portland office to dealers in Washington other than in the nine southern counties of the state (R. 49-50). The sole factual difference between this class and the other is that here Chevrolet maintained a "branch office" in Seattle, consisting of one man and his secretary. Its or his function was to assist Chevrolet dealers in Alaska, part of Idaho and all of Washington except the nine southern counties, to give better service on orders and in particular to get faster delivery. This office did not solicit, receive, process, accept or see orders; it did not make franchise or credit approvals; and it did not receive payments, make deliveries or keep books. The branch manager had no jurisdiction over and did not establish contact with any other Chevrolet personnel in Washington, and no other personnel reported to, used or worked from this office. (R. 58-59)

The Superior Court held that all transactions of the first class were in interstate commerce and outside the territorial jurisdiction of the state and that the application of the statute would be repugnant to the Commerce Clause of, and the Due Process Clause of the Fourteenth Amendment to, the United States Constitution (R. 21-22, 61-62). It held, however, that the presence of the branch office in Seattle and its "direct connection" with the second class of transactions removed the constitutional immunity from that class (R. 21-22, 62). Judgment was entered accordingly (R. 65-67), and the State appealed (R. 67-68) and General Motors cross-appealed (R. 68-69) the respectively adverse portions of this judgment to the Washington Supreme Court which held that all transactions, both of the first and second classes, were taxable (R. 439-455).

It is possible to proliferate the detail but we think that doing so adds nothing to an understanding of the case and,

on the contrary, tends to obscure the essentials. The Washington Supreme Court made a lengthy review of such details (R. 439-446), and in the process confused General Motors' activities in the state with activities outside the state and with activities of the independent dealers.

SUMMARY OF ARGUMENT

> "Not the tax in a vacuum of words, but its practical consequences for the doing of interstate commerce in applications to concrete facts are our concern." *Nippert v. City of Richmond*, 327 U.S. 416, 431.

For the reason indicated in that quotation, we deem it helpful to consider the economics and practical aspects of the situation before examining the application thereto of rules of constitutional interpretation.

Economic Aspects

A tax on or measured by gross receipts may not be unconstitutional when applied to business wholly intrastate[2] but its economically unsound nature frequently leads to its unconstitutional application to interstate, multistate or extrastate business. Such a tax is unsound, wholly apart from its extraterritorial and interstate commerce overtones, because it tends to pyramid through successive applications to successive transactions and wholly disregards differences in the magnitudes of activities and benefits which are supposedly its subject and justification, respectively. This in-

[2] A strong argument could be made that even in such case equal protection is unconstitutionally denied in favoring vertically integrated businesses over businesses not so integrated.

herently capricious incidence of such a tax tends to obscure its inherent discrimination against interstate commerce. Such discrimination is aggravated when, as in this case, nearly all of the acts or incidents which produce the receipts occur without the state and only one taxable "incident" is found within the state, and the tax would be no heavier if all acts or incidents were within the state.

Apparently the reason for the Washington Supreme Court's straining to uphold the tax in this case is its adherence to the fallacious concept of the "market state": that the "market", rather than productive facilities and business activities, creates income; that a vendor "takes money out of the market" and should pay something in return. The fact is that the vendor puts as much value into the state as he takes out—if the product were not worth more to the purchaser than its price, he would not purchase it. It is a fact also that the state, in providing governmental services to the "market", is rendering such services to and for the benefit of its citizens who comprise the market, and not to the foreign vendor who deals with those citizens. A tax based on, and bearing a reasonable relation to, the vendor's activities, if any, within the state is justifiable; but not a tax based on the presence of customers.

Economic incidence of a tax is important to its constitutionality. If the tax is actually borne by a person who owes a duty to the taxing jurisdiction for equivalent benefits received, it meets the requirements for elemental fair play which is one of the tests of constitutionality, *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444. Income and franchise taxes are usually assumed to be borne by vendors, as distinguished from sales and use taxes which are assumed to be borne by purchasers. Any doubt as to the validity of that

assumption as to franchise taxes measured by gross receipts is dispelled for this particular tax by the statute itself which provides that the tax shall not be construed as a tax on purchasers but shall constitute part of the vendors' overhead.[3]

As a part of overhead, the tax is reflected in company-wide prices and comes out of customers generally, only a small percentage of whom are in Washington.

The economic impact of this decision, if it is allowed to stand, will be huge. It is a wholly novel approach to the taxation of interstate commerce which would seriously impede commerce, not only with Washington, but with other states eager to increase local revenues at the expense of foreigners. The fact that five trade associations filed herein *amicus curiae* briefs urging this Court to hear this appeal is eloquent testimony to the novelty and impact of the decision below.

First Question—Interstate Commerce

The first question is whether the tax imposed on these transactions is an unconstitutional regulation of interstate commerce or unconstitutionally exposes interstate commerce to multiple burdens.

A. In the light of prior decisions, this question seems to answer itself. "It is beyond dispute that a State may not lay a tax on the 'privilege' of engaging in interstate commerce". *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 458, citing *Spector Motor Service Inc. v.*

[3] RCW 82.04.500, p. 4a, *infra*.

O'Connor, 340 U.S. 602. The tax here is solely for the privilege of engaging in the business of making wholesale sales.[4] The taxed sales were made in other states, followed by shipment of goods from other states to customers within the state[5] (R. 47-48, 54). This is pure interstate commerce, and there was no separable intrastate business, the minimal activity within the state being exclusively in furtherance of that interstate commerce.

B. Because of its inherently discriminatory nature, a tax on the unapportioned gross receipts of interstate commerce is invalid. *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, involving this same tax as applied to outshipments. The rule is the same for in-shipments. *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U.S. 390, involving a flat amount tax.

C. This tax, if applied as the Washington Supreme Court would apply it, leads directly to prohibited multiple burdens on interstate commerce merely because it is interstate commerce. If the insubstantial elements of "wholesale selling" (as characterized by that court) that took place in Washington form the basis for a tax, *a fortiori* the much more substantial elements of the same wholesale sales which took place in other states justify taxes by those states. The Commerce Clause prevents such a result. *Nippert v. City of Richmond*, 327 U.S. 416.

D. An unapportioned gross receipts tax for the privilege of engaging in business is valid only if the business is local and the privilege is intrastate commerce, realistically separable from interstate commerce. *Norton Company v. Department of Revenue*, 340 U.S. 534. The Seattle warehouse of General Motors Parts Division is such a local busi-

---

[4] RCW 82.04.270, p. 2a, *infra*.

[5] "'Sale' means any transfer of the ownership of, title to, or possession of property for a valuable consideration * * *." RCW 82.04.040, p. 1a, *infra*.

ness (R. 18-19, 59-60). The tax is paid with respect to its transactions without dispute (R. 18-19). The transactions involved in this appeal had no connection with that store nor with any other place of business in the state (R. 54, 56). They are not in any sense local business nor intrastate.

E. The presence of Chevrolet's so-called "branch office", added to the factors relevant also to the first class of transactions, does not make the second class of transactions taxable. The one man in that office merely advised and assisted dealers. To the extent that his activities were related to sales at all, it was merely to expedite the interstate shipments. *Alpha Portland Cement Company v. Massachusetts,* 268 U.S. 203.

Second Question—Interstate Commerce

The inherently unsound nature of a privilege tax measured by gross receipts and its inherent discrimination against interstate commerce show up strikingly in the circumstances of this case. In separate sections, the statute imposes the tax for the privilege of manufacturing[6] and for the privilege of selling.[7] In a third section it provides that if the tax is paid for the privilege of selling it need not be paid also for the privilege of manufacturing.[8] The result is that the tax is exactly the same whether the taxpayer (a) manufactures in the state and sells elsewhere; or (b) manufactures elsewhere and sells in the state; or (c) both manufactures and sells in the state. In our case, both manufacturing and selling take place outside the state, but the

[6] RCW 82.04.240, p. 2a, *infra.*

[7] RCW 82.04.270, p. 2a, *infra.*

[8] RCW 82.04.440, pp. 3a-4a, *infra.*

Washington Supreme Court has treated the business as if it came under category (b). Even if that treatment were correct, application of the tax to these circumstances develops the risk of multiple taxation of interstate commerce, not borne by local commerce, which the Commerce Clause forbids. *Freeman v. Hewit*, 329 U.S. 249.

In this case, there is more than the mere threat of multiple exposure—there is actual double taxation. Some of the products sold to Washington customers are manufactured in St. Louis, which city has a gross receipts tax essentially the same as Washington's.* The products manufactured in St. Louis pay a tax there for the privilege of manufacturing, and another to Washington for the privilege of selling. Only one such tax would be payable if the products were sold in St. Louis or if they were manufactured in Washington. The fact that a tax bears uniformly upon operations entirely within the state (this one does not) does not validate its discrimination against interstate commerce. *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64.

Third Question—Due Process

A Washington tax reasonably related to the minimal activities of General Motors employes in the state would be unassailable on due process grounds. *International Shoe Co. v. State of Washington*, 326 U.S. 310. This is not such a tax. It is laid on the privilege of doing things—making sales—which are done almost exclusively without the state, and measured by the entire unapportioned gross receipts of the aggregate of all the extra-state activities, manufacturing as well as selling. Washington is thus attempting to tax privileges which are not granted or protected by Washington, but by Oregon, California, Missouri and Michigan. This is a wholly unwarranted extension of the state's jurisdiction

* Appendix B, pp. 5a-6a, *infra*.

to events and values beyond its borders and a deprivation of property without due process of law. *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, 330. Entirely aside from the due process clause of the Fourteenth Amendment, such extraterritorial exertion of state power is unconstitutional since a state has no jurisdiction beyond its borders. *New York, Lake Erie and Western Railroad Company v. Pennsylvania*, 153 U.S. 628.

Even if the minimal in-state activities of General Motors employes are sufficient to provide the "definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax", *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 344, which is doubtful as to the sales here taxed, the tax still goes far beyond the permissible bounds of due process because its measure "bears [no] fiscal relation to the protection, opportunities and benefits given by the state". *Wisconsin v. J. C. Penny Co.*, 311 U.S. 435, 444. A tax which is not properly apportioned to business done within the jurisdiction denies due process. *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123.

ARGUMENT

ECONOMIC ASPECTS

There are two fundamental reasons for the incorrect legal result reached by the Supreme Court of Washington in this case. They are fiscal and economic, rather than legal or constitutional, but they led the Court to an incorrect application of constitutional principles. It is necessary to examine them to understand the Court's holding.

Three Types of Taxes

It may be helpful at the outset to distinguish among three types of taxes: (1) net income taxes; (2) sales and use taxes; and (3) franchise taxes measured by unappor-

tioned gross receipts. This distinction is of great importance because of differences in economic incidence, or who bears the burden of the tax. Other relevant distinctions are: between apportioned net income taxes and franchise taxes measured by apportioned net income; between sales and use taxes; and between apportioned and unapportioned gross receipts taxes.

Economists are unwilling to state categorically where the burden of any tax actually falls, and it would be rash for lawyers to attempt to do so. The question should not be ignored, however, because its answer is the key to one of the important considerations in determining whether a given tax in given circumstances is constitutionally infirm. A tax is constitutionally in much better shape if it is borne by a person who owes a duty, for benefits received, to the taxing jurisdiction, in some rough equivalence to the amount of the tax. For that reason, assumptions are made, including, at least implicitly, by this Court, that tax burdens fall where they are intended to fall or where they would fall but for suspected, though subtle and unidentifiable, shifting. Such assumptions are sufficiently accurate and entirely valid for this purpose.

As applied to the three types of taxes here distinguished, these assumptions are: (1) the burden of net income taxes, including franchise taxes measured by net income, falls on the income taxed and hence on its owner; (2) sales and use taxes are added to price and hence are paid by the purchaser; (3) the burden of franchise taxes measured by gross receipts falls on the person exercising the franchise. There might be argument that under some circumstances there would be no such difference between categories (2) and (3), but the Washington legislature has foreclosed any such discussion in this case by specifically providing that

its category (3) tax here involved is to be absorbed by the vendor as part of its general overhead, RCW 82.04.500. The result is to increase prices to all the vendor's customers, wherever located.

Tested by these considerations, the tax in this case does not come into court with clean hands. Since it is reflected in company-wide prices, it comes out of customers generally, only a small percentage of whom are in Washington. This is in sharp contrast to a sales or use tax, which would be paid by customers in Washington, receiving the benefits of the state's protection and services and having the power through their elective franchise to direct the use of the tax or repeal it altogether. It contrasts similarly with a net income tax properly apportioned to the contribution which General Motors' minor activities in Washington make to its total income.

Basic Unsoundness of This Tax

One of the fiscal and economic problems which the Washington Supreme Court did not recognize is the unsound nature of the tax—a tax for the privilege of engaging in business measured by the gross receipts thereof. It is difficult to make a logical determination of the applicability of the tax to a specific circumstance when the whole tax is illogical. The tax is inherently discriminatory. Suppose, for example, that a vertically integrated organization owns forest lands from which it takes a tree, a lumber mill in which it processes the tree into lumber, a furniture factory in which it manufactures the lumber into a table, and a store in which it sells the table to a user. Since there has been only one sale there is only one tax.

Suppose further that another table has a different history. The tree is sold to a lumber mill, which sells the lumber to a furniture manufacturer, who sells the table to a wholesaler who sells to a retailer who makes the final sale. Five sales, five taxes.

Whether there is one tax or five depends not on the substance of the taxed activity, nor upon the protection and benefits conferred by the state, but upon the wholly irrelevant matter of the form of business organization. It may very well be that the five separate businesses in the second example could establish that they are being denied their constitutional right to protection of the laws equal to that accorded to their integrated competitor in the first example.

There is no need to consider here, however, whether the economic unsoundness of such discrimination results in its constitutional unsoundness also when all the operations of all the taxpayers are within the taxing jurisdiction. The fact that the entire tax is uneven and capricious in its application tends to obscure its discrimination against interstate commerce. However, the fact that there is discrimination as among persons engaged in intrastate commerce does not excuse discrimination against interstate commerce:

> "It [a state] cannot justify what amounts to a levy upon the very process of commerce across States lines by pointing to a similar hobble on its local trade," *Freeman v. Hewit*, 329 U.S. 249, 254.

This Court has recognized that this type of tax is inherently discriminatory against interstate commerce. In distinguishing the apportioned net income taxes involved in *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, this Court said, at page 462:

> "This is not an unapportioned tax which by its very nature makes interstate commerce bear more than its fair share."

The working out of the discrimination and double taxation in this case is developed hereinafter. At this point we wish merely to observe that the unsound, discriminatory nature of the entire concept of this tax makes it hard to rationalize the rules for its application and no doubt contributed confusion to the State court's deliberations.

The "Market State" Concept

The second obstruction to the State court's reaching a correct result was its preoccupation with the "market state" concept. This shows clearly in the key sentence in its opinion (R. 450):

> "Although the mechanical aspects of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transaction occurs in Washington *where the customer is located and where the demand for the manufactured product exists,* in very large degree, as a result of General Motors promotional activities." (Emphasis supplied.)

It appears also in the general tone of the whole opinion, as well as in prior pronouncements of the same court. In *B. F. Goodrich Co. v. State of Washington,* 38 Wn. 2d 663, 231 P. 2d 325, for instance, it was quite evident that the court was of the view that Goodrich morally owed tax to Washington with respect to every sale to a Washington customer, and very reluctantly concluded that it was bound by this Court's decision in *Norton Company v. Department of Revenue,* 340 U.S. 534, to permit Goodrich to escape that obligation with respect to two classes of transactions. Said the Court, at 231 P. 2d 325, 331-2:

> "Whatever we may think of this distinction [between the use tax involved in *Nelson v. Sears, Roe-*

buck & Co., 312 U.S. 359, and the franchise tax involved in *Norton Co. v. Department of Revenue*, 340 U.S. 534] from the standpoint of practical effect, our only concern with it here is that it has been made and must be observed. In accordance with it, we are compelled to hold that the Class E sales, involving orders sent by the purchasers directly to an office out of the state, and filled by shipment direct to the purchaser, without any intervention on the part of the local office, cannot constitutionally be made the subject of the tax here involved.

* * * * *

"Were we free to decide this case differently, we might well do so. Numerous questions must necessarily follow from the conclusions we have here reached. Does the limitation of the operative effect of this tax to what is found to be intrastate commerce actually protect interstate trade from an unjustified levy, or does it merely allow to that trade a special and unwarranted exemption which local business is not permitted to enjoy? And even if we assume that this sort of taxation, if applied to interstate commerce, would have the inhibitory effect which the supreme court has held the constitution sought to forbid, have we removed that burden when we subject receipts of certain sales to taxation merely because they were made with the assistance of a local outlet of a corporation, while at the same time allowing those sales, made through out-of-state branches of the same company, to go tax free?

* * * * *

"It scarcely needs be said that, with respect to matters involving the Federal constitution, we, as an inferior tribunal, must follow the pronouncements of that [United States Supreme] court no matter what our private views may be."

Three of the nine judges who subscribed to that sentiment in 1951 were still on the bench in 1962 and concurred in the opinion written by one of them in this case.

If we were dealing with a sales or use tax, which normally falls on the purchaser, there would be reason for the court's point of view. As Mr. Justice Rutledge well said in his opinion concurring in *General Trading Co. v. State Tax Commission*, 322 U.S. 335, and *International Harvester Co. v. Department of Treasury*, 322 U.S. 340, and dissenting in *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, at page 361, writing of *sales and use taxes:*

> "If in this case it were necessary to choose between the state of origin and that of market for the exercise of exclusive power to tax, or for requiring allowance of credit in order to avoid the cumulative burden, in my opinion the choice should lie in favor of the state of the market rather than the state of origin. The former is where the goods must come in competition with those sold locally."

When the *consumer* is paying the tax, it is right and proper that it be paid to the jurisdiction which renders services to the consumer. But this is not that type of tax. The statute specifically imposes it upon the supplier, not the consumer:

> "It is not the purpose of this title that the taxes herein levied upon persons engaging in business shall be construed as taxes upon the purchasers or customers, but it is the intention that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons engaging in business." R.C.W. 82.04.500, p. 4a, *infra*.

It is apparent that the Supreme Court of Washington has fallen for the fallacious economic concept of the "market state". The argument runs this way: when products are sold by an out-of-state manufacturer to residents of

the state, that alien manufacturer is "taking money out of the state". Hence, he should be required to put some back in the form of a contribution, not to his customers as a reduction in price, but to the state itself. Another version of the same story is that a market is as essential to trade as is production, and that the protection and benefits which the state affords to the persons who constitute the market should be paid for by the supplier.

It seems amazing that the mere statement of these propositions does not convince everyone that they carry their own refutation. The Supreme Court of Washington is not, however, alone in succumbing, and legal writers (never economists or fiscal experts) have not infrequently expressed similar views. *This* Court does not fall into that error, and has frequently and emphatically repudiated the idea. Most succinct of its statements was in *Stratton's Independence, Limited v. Howbert*, 231 U.S. 399, where it was said at page 415:

> "* * * 'income' may be defined as the gain derived from capital, from labor, or from both combined * * *"

That statement has often been quoted and reiterated by this Court: *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185; *Eisner v. Macomber*, 252 U.S. 189, 207; *Merchants' Loan & Trust Company v. Smietanka*, 255 U.S. 509, 517; *Bowers v. Kerbaugh-Empire Company*, 271 U.S. 170, 174; *National Carbide Corp. v. Commissioner*, 336 U.S. 422, 437; *Commissioner v. Culbertson*, 337 U.S. 733, 740.

"Market State" vs. "Producer State"

Another aspect of the fallacy is the imaginary distinction between "market state" and "producer state", not as to individual transactions, but as to the totality of the state

economy. There is no difference. Each state is equally a "producer" and a "market". Upon a little reflection, it is obvious that, over a reasonable period of time, each state's imports and exports must exactly balance.[10] The frequently heard argument that, by selling something to a person in the local market a foreign producer is "taking money out of the community" is wholly erroneous.

It is convenient, as Adam Smith did in his "Wealth of Nations" a century and a half ago, to revert to analysis of a barter economy. Washington produces apples, California produces oranges. If the proprietor of a Washington orchard and the proprietor of a California grove exchange a box of apples for a box of oranges, each makes a profit—the apples are worth more than the oranges to the Californian, and the oranges are worth more than the apples to the Washingtonian. If that were not so, there would be no exchange. Hence, it is nonsense to argue, as the proponents of the "market state" concept do, that Washington has taken oranges "out of" California, or that California has taken apples "out of" Washington. Washington has put apples into California, and California has put oranges into Washington, as a result of which the wealth of each state is increased.

Bringing the transaction up to date in our money and credit economy injects opportunity for confusion but no change in principle. The apple grower sells the box of apples (along with many other boxes) to a distributor in Washington, who sells to a dealer in California, who sells to the orange grower. The box of oranges takes a similar

[10] There can be temporary exceptions: if one state is importing capital, it will be building up debt and its imports will exceed its exports to that extent. Since all states are now increasing their own capital from within, this theoretical exception has no practical existence today.

route into the hands of the apple grower. Money (or credit) is used to represent the value of the fruit at each step. Still, the apple grower has not "taken money out of" California, nor the orange grower out of Washington. As in the barter example, there has merely been an exchange, benefiting both parties and hence both states, with money used as a lubricant to facilitate the operation.

Complicate the situation by supposing that the orange grower doesn't like apples, and that, having obtained the apple grower's money for a box of oranges, he spends it elsewhere, perhaps for a box of Hawaiian pineapples. But since the apple grower can obtain money only by selling apples, the transaction is incomplete until we add another step, and that step is the sale of a box of apples to someone in Hawaii.

Oversimplified as it is, that last example nevertheless contains every element of our complex economy. Actually, of course, Washington produces many products in great quantity and ships them all over the world, and imports many products, including automobiles, from all over the world. But it imports no more than it exports, because it must use the proceeds of exports to pay for the imports. The automobile producer does not "take money out of" Washington when he sells an automobile to a Washington customer. He exchanges the automobile, directly or indirectly, for apples, lumber and fish produced in Washington.

The proponents of the "market state" concept, including the Supreme Court of Washington, cling to the tenet that the purchaser benefits the supplier, overlooking the obvious fact that the purchaser must also be benefited, else he wouldn't trade.

If the market state concept had any validity, it would apply to many situations where no attempt is now made to apply it, for various reasons. In our third example above, we assumed that the California orange grower sold to a distributor in California, who in turn made a sale in Washington. Obviously, the orange grower is in that case just as much "taking money out of" Washington as if he were selling directly to Washington customers, and his obligation to return something to the state is just as great; and yet since his own direct customer, the distributor, is in California, no one supposes he can be required to pay a tax to Washington.

Another example further emphasizes the absurdity of the concept. A resident of Washington, on a vacation tour, finds a resort hotel to his liking in Palm Springs, California, and spends a week and considerable money there. The hotel has just as much "taken money out of" Washington as has the orange grower. The concept requires it, too, to return a contribution to that state. It would make no difference if the Washington resident had been led to the hotel by an advertisement in a Seattle newspaper. If the hotel maintained an office in Washington for soliciting business, making reservations, billing, and other activities, it might be subject to some Washington tax. That, however, would be because of its activities in Washington, and not because it was taking anything from the state. A similar office engaged in the purchase of timber for an out-of-state mill would have a similar tax liability, although it would, according to the "market state" concept, be "putting money into" the state rather than taking it out.

Although there appears to be no support for the "market state" concept in the writings of economists, and indeed their teachings are strongly to the contrary, there has been

very little occasion for succinct, quotable statements on the subject, perhaps because the concept is at war with the basic economic principle that wealth is produced by capital and labor, not by markets. There are, however, some few such expressions, of which three examples will suffice.

The late Professor Paul Studenski, renowned scholar of public finance and fiscal adviser to governments including the State of New York, writing an article for Virginia Law Review's 1960 "Symposium on State Taxation of Interstate Commerce", said (46 Va. L.R. 1121, *et seq.*, 1129-32):

> "The newly introduced state corporation income taxes on corporations which merely solicit orders in the state and operate no manufacturing plants, warehouses, stores or full-fledged offices in it, are unsound economically and fiscally in several major respects. Their faults may be summarized under nine heads * * *
>
> "A. *Lack of Justification on Any Rationally Conceived Benefit Principle*
>
> "The imposition of these levies is being justified by their protagonists in the market states by a reasoning which runs about as follows: The state of the market—frequently referred to as the state of the consumers—furnishes the money from which the out-of-state producer obtains his profit. Without the market there would be no profit * * * The place of consumption contributes to the profit of the producer just as much as the place of production * * * The market state, therefore has at least an equal claim with the manufacturing state for taxing the profit of the producer * * *
>
> "This reasoning contains two independent arguments: (1) the *government* of the market state confers valuable benefits on the out-of-state producer * * *, and (2) the *consumers* of the market state by their patronage confer valuable benefits upon him.

"The first argument exaggerates the extent of the benefits conferred by the govenment of the market state upon the out-of-state producer. Actually, the benefit involved is very modest and very indirect * * * The protective services furnished by the governments of the market states to the out-of-state producers * * * exist only because in their absence the out-of-state producers would not ship goods into the state and their customers would have to get along without them * * *

"The second argument, that the *consumer* furnishes a profit to the out-of-state producer and therefore the consumer's state is entitled to tax the producer's profit, is fallacious. It flies in the face of the most elementary facts of economics * * * The profit is produced not by the efforts of the consumer, but by those of the producer * * * The consumer does not confer any benefit upon the producer for which he does not receive an equivalent benefit * * * The whole theory of benefit conferred by the consumer on the out-of-state producer as a basis for taxing the latter on its income represents a most extraordinary combination of irrelevant and misleading propositions lacking either rhyme or reason * * *

"One of the worst features of the use of sales-by-destination in allocation formulas is that it permits the low income states to appropriate to themselves resources belonging to the high income states."

Professor C. Lowell Harriss has written to the same effect (49 Amer. Econ. Rev. Vol. 3, pp. 398, 399-400 (1959)):

"The failure of states to achieve greater harmony [in net income tax apportionment formulae] results in part from the desire of some states to 'import' income for tax purposes. Choice of one as against another allocation formula can permit just this re-

sult. For example, a state whose residents buy more manufactured goods from outside than they 'export' can decree that a large part (or all) of business net income originates where the products are sold, i.e., where buyers live. The place where the goods are made is held to be unimportant. Adjustment of the elements of the formula and of their weighting to take account of the nature of a state's economy can make a difference in the state's tax base. Legislatures can reach out and tax 'foreigners', corporations (stockholders, consumers, employees, or whoever bears the corporation tax) who have no vote in the state. Any state is now free to decree that some condition which does not in fact create income shall be assumed for tax purposes to be the source of income. • • •

"The most widely used basis for income allocation is the 'Massachusetts formula'. Property, payrolls, and sales (receipts) are employed and weighted equally. • • • But use of the sales (receipts) factor has little—or no—economic justification. Human effort produces income. Use of property produces income. Selling and purchasing, however, do *not* produce income except as human effort and property are involved. Although selling is, of course, a part of the income-creating process, its contribution is represented not by the dollar volume of sales but by the remuneration of the human and material resources that perform the selling function. To assign sales an independent importance is to depart from economically proper apportionment. • • • I submit that a formula based on economic reality will accord no separate or distinct place to sales."

In a very recent study, Professor Charles E. Ratliff, Jr., has expounded the same principle and concludes:

"The property-payroll formula is theoretically sound and is also superior to alternative formulae

> on such criteria as simplicity, certainty, administrative and compliance costs, and effect on resource allocation and economic growth. Inclusion of a sales factor, whatever the basis of sales, cannot be economically justified under the contribution-to-income approach; and the sales factor is the one responsible for most of the practical difficulties."—"Interstate Apportionment of Business Income for State Income Tax Purposes", University of North Carolina Press, 1962, p. 115.

Professor Studenski, Professor Harriss and Professor Ratliff were all writing about apportionment of net income taxes, and made the point that gross receipts, particularly when allocated to the state of the consumer as such, are not even a proper consideration as an apportionment factor. Their expositions apply *a fortiori* to a tax on unapportioned gross receipts alone.

The Washington tax is not in terms a tax on the privilege of having customers, and if it were it would surely be an interference with interstate commerce in violation of the protection given to such commerce by the Constitution of the United States. Nevertheless, the Supreme Court of Washington is applying it in that manner.

Impact of the Decision

There is no support for the Washington court's holding in any prior decision of this Court, and there are many decisions of this Court to the contrary on both interstate commerce and due process grounds. It is a wholly novel decision, upsetting understandings which tax collectors and taxpayers alike have had for years. It is shocking to great groups of taxpayers, many of them represented by the five trade associations—Automobile Manufacturers Associa-

tion, Electronics Industries Association, Magazine Publishers Association, National Association of Manufacturers, and National Coal Association—which filed briefs *amicus curiae* herein asking this Court to hear this appeal. No other state or local taxing jurisdiction has thus far sought to impose taxes upon such a thin basis and on a measure so unrelated to benefits conferred. The damage which this decision, if allowed to stand, would do to interstate commerce is enormous. Not only would it hamper trade with Washington, but its inevitable extension to the other states and cities that now have this type of tax and to still others who would like to adopt this easy method of making foreigners pay for benefits for the local citizenry would create a whole series of interstate tariffs, exacting a toll from business done entirely elsewhere and elsewhere amply taxed.

Effect on Local Governments and Competition

This Court has frequently expressed its disapproval of the nature of an unapportioned gross receipts tax as a means of taxing interstate commerce, and has consistently held that such a tax may not be imposed upon exclusively interstate commerce. It has, however, accommodated the argument that interstate commerce must bear burdens equivalent to intrastate commerce by permitting the taxation of local activities, sufficient to constitute intrastate business, measured by the proceeds of the interstate commerce of which the local activities were a part. *Norton Company v. Department of Revenue*, 340 U.S. 534.

That argument, however, is unsound and the accommodation is unnecessary. The argument assumes that the states not only can but must use that type of tax. The fact is that very few states now do (in addition to Washington,

we believe only Indiana and West Virginia), plus a number of municipalities. It is not true that if by federal law, constitutional or statutory, a particular tax is forbidden for federally protected commerce or instrumentalities the burdens of the federally protected will be lightened and the burdens of competitors not so protected will be increased. An excellent example is R.S. §5219 (44 Stat. 223, 12 U.S.C. §548), which severely limits the ways in which states may tax national banks. The result has not been to impose any competitive disadvantage on state banks. Instead, national banks contribute their full share through one or more of the permitted methods, and state banks are generally taxed in exactly the same way. Equality is achieved by the voluntary action of the states in refusing to impose upon those whom Congress cannot protect the types of burdens which Congress thought improper for those it can protect.

If immunity of interstate commerce from unapportioned gross receipts taxes were thought to result in a competitive disadvantage to intrastate competition, the states have at hand ample remedies. Interstate commerce pays its full way under many other types of taxes. States may tax its apportioned net income, *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves and Fittings, Inc.*, 359 U.S. 450; or its property, at its value enhanced by the interstate business, *Adams Express Company v. Ohio*, 165 U.S. 194, 166 U.S. 185; or its use of locally provided facilities, such as roads, *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653; or the value which it adds to property or in services, *Armco Steel Corporation v. Michigan*, 102 N.W.2d 552, app. dis. 364 U.S. 337; or its capital, at its value enhanced by the interstate business, *Ford Motor Co. v. Beauchamp*, 308 U.S. 331; or the use of its products, *Henneford v. Silas Mason Co., Inc.*, 300 U.S. 577.

The unapportioned gross receipts tax, if it ever had a proper place in systems of taxation, is now an anachronism which most states have abandoned and all states can afford to abandon in favor of the more sophisticated taxes more recently developed and now well known and widely used. It is the clumsiest weapon in the tax arsenal with innate inability to confine its charge to the target (local business) at which it is supposedly aimed, striking also the innocent bystander who ventures near though not into the target area.

FIRST QUESTION—INTERSTATE COMMERCE

A. The tax is invalid as a levy on the privilege of engaging in interstate commerce.

The first question (pp. 2-3, *supra*) is the broad one whether a state may tax the privilege of engaging in interstate commerce which the Constitution guarantees and confides to the exclusive control of Congress and measure the tax by unapportioned gross receipts.

In terms of this question, there are three types of commerce: *intra*state, *inter*state and *extra*state. We assume that a state may impose a non-discriminatory tax, measured by unapportioned gross receipts, upon the privilege of engaging in a separable intrastate business, such as the activities of the General Motors Parts Division warehouse in Seattle which involved sales from local inventories to local customers (R. 18-19, 59-60).[11] However, it is settled

[11] For the reasons discussed under "Economic Aspects", pp. 19-20, *supra*, a tax measured by unapportioned gross receipts is so uneven and capricious in its burdens as among various types of business arrangements, particularly with respect to the single-taxed vertically integrated business and the multiple-taxed non-integrated businesses, that it may be an unconstitutional denial of equal protection even as to wholly intrastate commerce. We have no occasion to examine this point further because this appeal involves no intrastate commerce but only extrastate and interstate commerce.

that the Commerce Clause absolutely forbids a state tax, however measured, upon the privilege of engaging in purely interstate commerce, even though that commerce is furthered by substantial in-state activities: *Cheney Brothers Company v. Massachusetts,* 246 U.S. 147; *Alpha Portland Cement Company v. Massachusetts,* 268 U.S. 203; *Spector Motor Service Inc. v. O'Connor,* 340 U.S. 602; and *Memphis Steam Laundry Cleaner, Inc. v. Stone,* 342 U.S. 389.

Mr. Justice Clark, speaking for the majority in *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.,* 358 U.S. 450, 458, described *Spector* as one of the "firm peaks of decision which remain unquestioned" out of some three hundred full-dress opinions of this Court dealing with state power to tax interstate commerce, stating "Moreover, it is beyond dispute that a State may not lay a tax on the 'privilege' of engaging in interstate commerce, *Spector Motor Service v. O'Connor,* 340 U.S. 602 (1951)". *Spector* holds that the Commerce Clause prohibits a non-discriminatory tax on the privilege of doing business within a state when applied to commerce that is exclusively interstate, even though the measure of the tax is *net* income fairly apportioned to substantial activities within the state. *A fortiori* such a tax measured by *unapportioned gross receipts* is invalid.

The taxpayer in *Spector* was engaged exclusively in the interstate transportation of freight by motor truck. It made shipments to and from customers in Connecticut and maintained two freight terminals there. The tax was assessed, in the language of the statute, as "a tax or excise upon its franchise for the privilege of carrying on or doing business within the state," 340 U.S. 602, 603-04. In striking down the tax as applied, the Court stated, 340 U.S. 602, 608-09, 610:

"The answer in the instant case has been made clear by the courts of Connecticut. It is not a matter of labels. The incidence of the tax provides the answer. The courts of Connecticut have held that the tax before us attaches solely to the franchise of petitioner to do interstate business. The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State. Those taxes may be imposed although their payment may come out of the funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the powers of the State and nondiscriminatory.

* * * * *

"In this field there is not only reason but long-established precedent for keeping the federal privilege of carrying on exclusively interstate commerce free from state taxation. To do so gives lateral support to one of the cornerstones of our constitutional law—*McCulloch v. Maryland, supra.*"

Likewise the answer in this case has been made clear by the language of the statute and its application. The Washington Business and Occupation Tax is a privilege tax levied by RCW 82.04.220 for "the act or privilege of engaging in business activities." In finding that this statute applies to the General Motors activities and transactions involved in this Appeal, the Washington Supreme Court decided (R. 447):

"The business and occupations tax statute, RCW 82.04.220, imposes a tax on the privilege of engaging in business activities. General Motors accomplishes wholesale sales of its products to retail dealers within the state. Part of the activities involved in these wholesale sales take place else-

> where; *e.g.*, orders are filled, delivery made, and payment is received outside of the state. *Nonetheless, business activities having a relation to wholesale sales are conducted in Washington. These activities provide an incident upon which the taxing statute operates.*" (Emphasis added.)

The statute taxes the business of making wholesale sales in the state. It does not purport to tax activities merely "related" to sales. By finding that "business activities having a relation to wholesale sales are conducted in Washington" and that such "activities provide an incident upon which the taxing statute operates," the Court below has held that a state may now tax the privilege of engaging in activities exclusively in interstate commerce.

The Washington Supreme Court does not in terms find any intrastate commerce nor any realistically separable local business. It sustains the tax upon a lengthy description, unsegregated, of not only General Motors' in-state activities but its out-state activities as well and also activities of its retail dealers, creating the impression of extensive taxable business activity (R. 439-447). It is not, however, the number of words taken to describe business activity that gives rise to tax liability. The controlling consideration is the *character of General Motors'* in-state activities, not those of its customers, nor what it does elsewhere.

These activities are nothing more than promotional and service efforts by traveling representatives in furtherance of the out-state manufacture, sale and delivery of General Motors products for shipment across state lines to Washington retail dealers by checking on the dealers' performance of their Dealer Selling Agreements and assisting them, principally by advice and information, with respect to the conduct of their retail businesses. The taxed transactions resulted from orders received and accepted at offices, warehouses or factories located outside the state.

The products were delivered and shipped directly to the dealers by common carrier, f.o.b. factory or warehouse, at which payment was received. The commerce culminating in the taxed transactions is predominantly extrastate except for such interstate shipments and the above-mentioned services in furtherance of such extrastate and interstate commerce. There is no intrastate commerce except that of the dealers which, of course, is fully taxed as such. (R. 12-19, 46-60)

Under these circumstances, the effect of the decision below is to sustain an unapportioned gross receipts tax imposed directly and solely on the privilege of engaging in exclusively interstate commerce or on extrastate commerce having minimal in-state aspects, contrary to the holding in *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602. In the *Cheney Brothers Co.* portion of *Cheney Brothers Company v. Massachuetts*, 246 U.S. 147, the court struck down a state tax on the privilege of doing local business as applied to a foreign corporation maintaining a local office which was engaged in soliciting orders for out-of-state acceptance and shipment directly to the customers. A similar privilege tax was invalidated in *Alpha Portland Cement Company v. Massachusetts*, 268 U.S. 203, as applied to a foreign corporation maintaining an in-state sales office engaged solely in interstate commerce, the court stating, 268 U.S. 203, 217: "Any such excise burdens interstate commerce and is therefore invalid without regard to measure or amount." *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, relying on *Spector*, which was recently approved in *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 458, held invalid a Mississippi privilege tax upon soliciting business for a laundry not licensed in the state as applied to a foreign corporation

doing no business in the state other than sending its trucks there to solicit business, pick up, deliver, collect for laundry and cleaning. *Cheney Brothers, Alpha Portland Cement, Spector, Memphis Steam Laundry* and *Northwestern States* establish a line of decisions, as traceable as that of the "drummer" cases,[12] which probibits the application of the Washington privilege tax to the activities and transactions involved in this Appeal.

B. The tax is invalid as a levy on unapportioned gross receipts from interstate commerce.

The tax here was assessed against General Motors for the privilege of engaging in interstate business within Washington. It was measured by the unapportioned gross receipts from interstate sales related to that business, all intrastate sales having been separately and fully taxed. It is invalid for both reasons. A direct unapportioned tax on gross receipts from interstate commerce has been definitely held beyond state taxing power ever since *Fargo v. Michigan*, 121 U.S. 230, and *Philadelphia and Southern Steamship Company v. Pennsylvania*, 122 U.S. 326 and more recently in *Fisher's Blend Station, Inc. v. State Tax Commission*, 297 U.S. 650; *Puget Sound Stevedoring Co. v.*

---

[12] A tax on the solicitation of interstate business is a tax on interstate commerce itself, *Robbins v. Shelby County Taxing District*, 120 U.S. 489. Cases following the *Robbins* decision include: *Corson v. Maryland*, 120 U.S. 502; *Asher v. Texas*, 128 U.S. 129; *Stoutenburgh v. Hennick*, 129 U.S. 141; *Brennan v. Titusville*, 153 U.S. 289; *Stockard v. Morgan*, 185 U.S. 27; *Caldwell v. North Carolina*, 187 U.S. 622; *Rearick v. Pennsylvania*, 203 U.S. 507; *Dozier v. Alabama*, 218 U.S. 124; *Crenshaw v. Arkansas*, 227 U.S. 389; *Rogers v. Arkansas*, 227 U.S. 401; *Stewart v. Michigan*, 232 U.S. 665; *Davis v. Virginia*, 236 U.S. 697; *Real Silk Hosiery Mills v. City of Portland*, 268 U.S. 325; *Best & Company, Inc. v. Maxwell*, 311 U.S. 454; *Nippert v. City of Richmond*, 327 U.S. 416.

State Tax Commission, 302 U.S. 90; *J. D. Adams Manufacturing Co. v. Storen*, 304 U.S. 307; *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434; *Freeman v. Hewit*, 329 U.S. 249; *Joseph v. Carter & Weeks Stevedoring Co.*, 330 U.S. 422; *Railway Express Agency, Inc. v. Virginia*, 347 U.S. 359.

Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 involved the very tax here asssessed against General Motors and is controlling on this point. The taxpayer, a Washington corporation, maintained its principal office in Washington. Its business was that of marketing agent for fruit growers and growers cooperative organizations in Washington and Oregon. As such, it made sales and deliveries of fruit in other states and foreign countries, collected the sales prices and remitted the proceeds to its principals after deducting transportation charges, certain expenses and its own compensation at the rate of 8 cents for a box of apples and 10 cents for a box of pears. Its representatives at numerous points outside Washington negotiated sales, executed written contracts of sale, effected delivery of the fruit shipments to buyers, collected the purchase price and remitted it to the taxpayer in Washington, where it accounted to the shippers.

The Washington Supreme Court sustained the Business and Occupation Tax as applied to the taxpayer's gross compensation on all fruit shipped from Washington. On appeal this Court reversed, and through Mr. Justice Stone, stated, 305 U.S. 434, 438:

> "While appellant is engaged in business within the state, and the state courts have sustained the tax as laid on its activities there, the interstate commerce service which it renders and for which the taxed compensation is paid is not wholly performed within the state. A substantial part of it is outside the state where sales are negotiated and written contracts of sale are executed, and where deliveries

and collections are made. Both the compensation and the tax laid upon it are measured by the amount of the commerce—the number of boxes of fruit transported from Washington to purchasers elsewhere; so that the tax, though nominally imposed upon appellant's activities in Washington, by the very method of its measurement reaches the entire interstate commerce service rendered both within and without the state and burdens the commerce, in direct proportion to its volume."

The rationale for prohibiting the application of an unapportioned tax on gross receipts derived from interstate commerce is clearly stated, 305 U.S. 434, 439-40:

"Here the tax, measured by the entire volume of the interstate commerce in which appellant participates, is not apportioned to its activities within the state. If Washington is free to exact such a tax, other states to which the commerce extends may, with equal right, lay a tax similarly measured for the privilege of conducting within their respective territorial limits the activities there which contribute to the service. The present tax, though nominally local, thus in its practical operation discriminates against interstate commerce, since it imposes upon it, merely because interstate commerce is being done, the risk of a multiple burden to which local commerce is not exposed. *Adams Manufacturing Co. v. Storen, supra*, 310, 311; *cf. Fargo v. Michigan*, 121 U.S. 230; *Philadelphia & Southern S.S. Co. v. Pennsylvania*, 122 U.S. 326; *Galveston, H. & S. A. Ry. Co. v. Texas*, 210 U.S. 217, 225, 227; *Meyer v. Wells, Fargo & Co.*, 223 U.S. 298; *Crew Levick Co. v. Pennsylvania*, 245 U.S. 292; *Fisher's Blend Station v. State Tax Commission*, 297 U.S. 650; see *Western Live Stock v. Bureau of Revenue, supra*, 260. Such a multiplication of state taxes, each measured by the volume of the commerce, would reestablish the barriers to interstate trade which it was the object of the commerce clause to remove. Unlawfulness of the burden depends upon its nature, measured

> in terms of its capacity to obstruct interstate commerce, and not on the contingency that some other state may first have subjected the commerce to a like burden."

Although the tax was there applied to outshipments, the quoted language and reasoning are equally apropos of inshipments, and have been applied in such cases, e.g., *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U.S. 390, in which a flat amount tax was invalidated as applied to inshipments with in-state activities very much more extensive than here.

C. The tax is invalid because the interstate commerce involved is exposed to unapportioned multiple burdens.

The last quotation from *Gwin, White & Prince, supra*, leads us to the third reason why the Washington tax may not, consistent with the Commerce Clause, be applied here: the interstate commerce involved is exposed to repeated exactions of the same nature from other states—the "multiple burdens" test. Measured against this standard, the tax is invalid. The Washington Supreme Court, in deciding that no "multiple burdens" were here imposed on interstate commerce, held that the imposition of gross receipts taxes elsewhere on the privilege of manufacturing are irrelevant to this point (R. 452-453). The risk of multiple burdens remains, however, since the same gross receipts may serve as the measure of both taxes. It is no answer to say, as did the Court below, that the taxes are levied on different privileges exercised in different states (R. 453).

But more important is that Court's failure to discuss the obvious multiple burden involved if other states impose similar taxes on the privilege of engaging in the business activities of *wholesale selling*. If the rationale of the de-

cision below is sustained, an identical tax could be levied, without apportionment, on the same gross receipts from this wholesale selling by every state in which any activity connected with such sales might occur. Other states, including Oregon, California, Michigan and Missouri, had contacts far more substantial than Washington with the taxed transactions (R. 14, 17-18, 47-48, 56-57).

Furthermore, this tax was imposed on interstate selling activities and not on any activity of General Motors "realistically separable" from such interstate commerce and measured by related interstate sales (R. 450-451). It is settled that a state may not fragmentize an interstate transaction into "local incidents" and measure a tax on such incidents by the unapportioned gross proceeds of the whole business. This Court dealt with that same question in *Nippert v. City of Richmond*, 327 U.S. 416, which struck down a flat amount municipal privilege tax as applied to the solicitation of interstate sales, saying at p. 423:

> "If the only thing necessary to sustain a state tax bearing upon interstate commerce were to discover some local incident which might be regarded as separate and distinct from 'the transportation or intercourse which is' the commerce itself and then to lay the tax on that incident, all interstate commerce could be subjected to state taxation and without regard to the substantial economic effects of the tax upon the commerce. For the situation is difficult to think of in which some incident of an interstate transaction taking place within a State could not be segregated by an act of mental gymnastics and made the fulcrum of the tax."
>
> • • • • •
>
> "This is not to say that the presence of so-called local incidents is irrelevant. On the contrary the absence of any connection in fact between the com-

> merce and the state would be sufficient in itself for striking down the tax on due process grounds alone; and even substantial connections, in an economic sense, have been held inadequate to support the local tax."

The "incidents" found taxable here are far less substantial than other elements of the sale itself (without reaching back to the underlying manufacturing) which occur elsewhere, as the execution of "Dealer Selling Agreements" and the receipt and processing of orders at the zone offices in Oregon, and the acceptance of orders, receipt of payment and delivery at the factories in California and elsewhere (R. 14, 17-18, 47-48, 54, 56-57). If the minimal elements in Washington are taxable, so are the larger elements in Oregon and again in California. This is the very type of fragmentation of an interstate transaction with exposure to multiple *unapportioned* exactions which the Commerce Clause was designed to prevent.

The Washington Supreme Court simply misses the point when it states that the tax imposes no multiple burden because the taxable incident is "selling," not "manufacturing" (R. 451-453). Its decision exposes the same gross receipts to a similar tax in every state in which some part of the sales transaction happens to occur. Moreover, its opinion fails even to mention, although strenously urged below, the first two Commerce Clause grounds which invalidate the tax as applied—*viz.*, the tax is imposed on the *privilege* of engaging in interstate business (pp. 34-39, *supra*) and is imposed directly on the *unapportioned gross receipts* therefrom (pp. 39-42, *supra*).

D. The tax is valid only when applied to a local business, realistically separable from interstate commerce.

An occupation privilege tax measured by unapportioned gross receipts may only be levied on a *local business*, realistically separable from the process of interstate commerce. Examples are manufacturing or publishing completed before interstate movement begins, *American Manufacturing Company v. City of St. Louis*, 250 U.S. 459 and *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250; or the operation of a local retail store after the interstate journey ends, *Norton Company v. Department of Revenue*, 340 U.S. 534. This is not a matter of mere "labels": substantial local activities, not part of the integral process of commerce across state lines, must be present before this type of tax may constitutionally be applied.

Norton Company v. Department of Revenue, 340 U.S. 534, is controlling here. The Norton Company operated at Chicago, Illinois, a branch office and warehouse from which it made local sales at retail. These sales were admittedly subject to the Illinois Occupation Tax "upon persons engaged in the business of selling tangible personal property at retail within this State" assessed on the gross receipts of such sales, Ill. Rev. Stat., 1949, c. 120, §441. Norton also made sales to Illinois customers in which the orders were accepted at the home office in Worcester, Massachusetts, and filled by shipment f.o.b. Worcester either directly to the customer or via the Chicago office, which had also forwarded some of these orders to Worcester.

The Illinois Supreme Court held all of Norton's sales to Illinois customers taxable because of the presence of the local office and warehouse. This Court reversed as to trans-

actions which had no connection with the local outlet, except the services of engineers working out of it, and declined to reverse as to transactions which utilized the local outlet in some more substantial way by either receiving the orders or distributing the goods because such transactions were not satisfactorily dissociated from the admittedly taxable business of the local outlet. This Court said, 340 U.S. 534, 538, 539:

> "This corporation has so mingled taxable business with that which it contends is not taxable that it requires administrative and judicial judgment to separate the two. We conclude that, in the light of all the evidence, the judgment attributing to the Chicago branch income from all sales that utilized it either in receiving the orders or distributing the goods was within the realm of permissible judgment."
>
> * * * * *
>
> "The only items that are so clearly interstate in character that the State could not reasonably attribute their proceeds to the local business are orders sent directly to Worcester by the customer and shipped directly to the customer from Worcester. Income from those we think was not subject to this tax."

Thus, the only actual holding of *Norton* is that transactions which are not mixed up with a local taxable business cannot be subjected to this type of tax. That is the holding which controls here; however, the Washington Supreme Court misconstrues that holding to require General Motors to dissociate its interstate activities in Washington from its interstate sales to local retail dealers (R. 450).

All that *Norton* requires is that the taxpayer segregate his interstate business and transactions from any local taxable business: "Although the concern does not, by engaging

in business within the state, lose its right to do interstate business with tax immunity, *Cooney v. Mountain States Telegraph Co.*, 294 U.S. 384, it cannot channel business through a local outlet to gain the advantage of a local business and also hold the immunities of an interstate business." *Norton Company v. Department of Revenue*, 340 U.S. 534, 539. The taxability of each transaction depends upon its own facts.

Ever since the *Norton* decision, it has been understood that an interstate seller had to have some local office or store conducting a separate intrastate business participating in its interstate sales before the seller could constitutionally become subject to this type of transaction or gross receipts tax on such sales. A local office, sufficiently substantial to be a separable and taxable local business, is the *sine qua non* for this type of tax. No General Motors office or other place of business in Washington participated in the transactions of the first class involved herein. The trial court found that every step from receipt and acceptance of the order to delivery of product and receipt of payment occurred at a General Motors office, warehouse or factory outside the State (R. 54).

The Washington court seriously misread this Court's opinion in *Norton*. The Norton Company was operating an admittedly taxable local store. The transactions as to which this Court permitted the Illinois court's judgment of taxability to stand were all channeled in one way or another through that store. This Court said, at 340 U.S. 534, 537:

> "But when, as here, the corporation has gone into the State to do local business by state permission and has submitted itself to the taxing power of the State, it can avoid taxation on some Illinois sales only by showing that particular transactions are dissociated from the local business and interstate in nature."

The burden of dissociation which Norton failed to carry was to dissociate the interstate business which passed through the store from the intrastate business of the store. The Washington court seemed to understand that at the time, as shown by its opinion in *B. F. Goodrich Co. v. State of Washington*, 38 Wash. 2d 663, 231 P. 2d 325, 330, wherein it said, analyzing the then brand-new *Norton* decision:

> "It [this Court in *Norton*] agreed that, where a corporation has gone into a state to do local business by state permission, and has set up an office which performs service helpful to its competition for local trade, it may be taxed like any other vendor for sales made in connection with that business. But this, the court held, does not prevent its being tax-free with respect to sales separate and distinct from its local business; though the burden is on the taxpayer to show this dissociation, where it is demonstrated, the sales involved are interstate commerce, and entitled to the same immunity from state taxation as if the corporation had never established an office within the borders of the state."

In the interim, that correct understanding has been lost and replaced by confusion. In its opinion herein, the Washington court says (R. 450):

> "According to the rule of the *Norton* case, *supra*, reiterated by this court in the *Goodrich* case, *supra*, where extensive business activity occurs within a state, taxation can only be avoided upon a showing that the activities are disassociated from the sales in question. Therefore, it is incumbent upon General Motors to make a showing of disassociation or, at a minimum, some degree of disassociation in order to remove from taxation that portion of sales not attributable to that activity. This has not been done."

The "activity" referred to is the promotional activity of the traveling representatives who called on the dealers in the state. Such activities of course cannot be dissociated from the sales to those dealers; but the sales were in interstate commerce exclusively. The activities were fully and completely dissociated from all other, unrelated, taxable intrastate commerce which General Motors was carrying on in the state. Thus, the trial court found (R. 55-56):

> "XXIV. With respect to the transactions in dispute, plaintiff at no time localized itself in Washington through an office, outlet or other place of business owned or leased by plaintiff, with the exception of the relation of Chevrolet's so-called 'Branch Office' to certain sales of that division. The transactions included in the assessment base were made without any participation or assistance whatsoever from any office, outlet or other place of business owned or leased by plaintiff in this state (with the exception of the relation of Chevrolet's so-called 'Branch Office' to certain sales of that division).
>
> "XXV. Plaintiff's Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions operated substantially independently of each other and of other divisions and subsidiaries. The transactions of each division are in no way related to the transactions of any other division, and the transactions of the Portland warehouse of the General Motors Parts Division were in no way related to the transactions of the Seattle warehouse of that division."

That is the "dissociation" which *Norton* requires: segregation of interstate commerce from intrastate commerce. If it were necessary to show complete dissociation of instate activity from interstate sales, *Spector, Cheney, Dilworth, Alpha Portland Cement, Nippert, West Point,* and *Memphis Steam Laundry* would all have been decided differently. There was no tax in any of those cases because

the in-state activity, more extensive than here, was, as here, all part of the interstate transactions themselves.

The latest and most authoritative textbook on the subject of state taxation of multistate business, Beaman's "Paying Taxes to Other States",[13] contains, pages 12-13 through 12-17, a penetrating analysis of the *Norton* case and continues with a description of the commendable manner in which Illinois authorities, after that decision, sought by regulation to comply with all the pertinent holdings of this Court. The author says, at pp. 12-16:

> "The key to the *Norton* case, as interpreted by the regulation, is this: the Norton Company's intrastate business, which was concededly taxable, constituted a 'vortex' which attracted other business that was interstate in nature; therefore while the interstate business could not be taxed itself, the tax on the local business could be increased to reflect in its measure the interstate business it secured for the taxpayer. The extent of this 'tainting' of interstate sales was limited by the *Norton* majority to business channeled through the place of business at which the local business was being conducted; thus interstate business not so channeled was not deemed to increase the tax on the local business."

At p. 12-15:

> "The regulation[14] treats in separate paragraphs:
>
> 1. sales made by or through an Illinois place of business at which the seller sometimes makes intrastate retail sales;

---

[13] Walter H. Beaman, "Paying Taxes to Other States", The Ronald Press Company, New York, 1963; Library of Congress #63-9292. The work was begun by Professor Mortimer M. Caplin and completed by Mr. Beaman after Professor Caplin was appointed Commissioner of Internal Revenue.

[14] Illinois Retailers' Occupation Tax Regulations, Article 5; App. E, pp. 12a-16a, *infra*.

2. sales made by or through an Illinois place of business at which the seller makes no intrastate retail sales, and

3. sales made by or through a place of business outside Illinois.

The rules laid down in these paragraphs are a melding of the *Norton*,[15] *Alpha Portland Cement*,[16] *Dilworth*,[17] *Nippert*,[18] and *Wiloil*[19] cases.

"Where the in-state office accepts an order so as to create a contract to sell, the sale is treated as taxable under the *Wiloil* doctrine. Where the order is received in the state, forwarded out-of-state for acceptance and filling, and the subsequent delivery to the purchaser is made through the local office, the sale is treated as taxable under *Norton*. If the sale is the result of an order sent by a customer to the seller's out-of-state office, and if the order is accepted at, and filled by shipment from; the out-of-state location, no tax is due, even though the order may be the product of itinerant solicitation in the state by solicitors coming from outside. This follows the *Nippert* and *Dilworth* cases. If the order is received in the state, forwarded out-of-state for acceptance, and filled by shipment from out-of-state stocks directly to the Illinois purchaser, the regulation directs this test: the sale will be taxable if the Illinois place of business receiving the order also makes intrastate sales (i.e., either concludes contracts to sell, or makes deliveries from Illinois stocks to Illinois customers), but would be non-taxable if the Illinois place of business does not make intra-

[15] *Norton Co. v. Department of Revenue*, 340 U.S. 534.

[16] *Alpha Portland Cement Co. v. Massachusetts*, 268 U.S. 203.

[17] *McLeod v. Dilworth*, 322 U.S. 327.

[18] *Nippert v. Richmond*, 327 U.S. 416.

[19] *Wiloil Corporation v. Pennsylvania*, 294 U.S. 169.

state sales. The first part of this test is based on *Norton;* the second on *Alpha Portland* and *Cheney Bros."* [20]

At p. 12-16:

> "The Illinois regulation also made clear that the rule of the *Nippert* case was to be respected. It specified that 'promotional activities' engaged in by an Illinois place of business would have no taxable effect, and it defined the term as follows:
>
> 'The term "promotional activities," as used in this regulation, shall mean and include any activities employed by salesmen or representatives in stimulating sales, including general correspondence; the distribution of catalogs or other similar sales literature; radio, newspaper, magazine and and other similar general advertising; good will calls; the interviewing of prospective customers; the solicitation of sales, and the like, but shall not include the receiving of orders, the making of contracts nor the making of complete and unconditional offers to sell to specific customers who accept such offers without modification so as to create contracts. * * *" [21]

After pointing out the importance to business of knowing beforehand what its gross receipts tax liability will be, and commending Illinois for its efforts in that direction, Mr. Beaman contrasts the Washington situation. At p. 12-17:

> "The *Norton* case was decided on February 26, 1951. Shortly thereafter, on May 15, 1951, the Supreme Court of the State of Washington handed down an opinion on issues partially controlled by the *Norton* case. The case was *B. F. Goodrich Co.*

---

[20] *Cheney Bros. Co. v. Massachusetts*, 246 U.S. 147.

[21] P. 16a, *infra*.

v. Washington.[22] Obviously out of sympathy with the result in *Norton* insofar as it limited the state taxing power, the court applied the case as sparingly as possible. Instead of reading the opinion as resting on the proposition that the carrying on of an intrastate business was the taxable event, and that the taxpayer's interstate business was taxable only to the extent that it could not be separated from the intrastate business, the court declared that the *Norton* case permitted a state to impose its gross income tax on all interstate commerce except that with which 'a local outlet had nothing to do.'"

"This case set the tone of subsequent judicial rulings in the State of Washington with respect to Commerce Clause matters . . ."

In *Goodrich*, the Washington court held taxable every transaction that had any contact, however tenuous, with an in-state office, and held nontaxable transactions which were solicited in the state but had no contact with a local office. How far the "tone" of that decision has been deepened is apparent from that court's holding in this case that interstate sales are taxable notwithstanding the complete lack of contact with any local office and the absence of even local solicitation, upon the basis of purely promotional activities and advertising. The trial court had found nontaxable the transactions of the first class herein (no contact with any local office), but held the second class taxable (very slight contact with a local office doing no intrastate business), relying for both holdings on *Goodrich* (R. 21-22).

We believe that the Illinois regulations are a good synthesis of the decisions of this Court pertinent to the application of gross receipts taxes to in-shipments. Even though

---

[22] 231 P.2d 325, cert. den. 342 U.S. 876.

it is quite apparent that Illinois was not trying to enlarge the interstate commerce immunity beyond what was absolutely necessary, it is clear that neither class of transactions herein would be taxed by Illinois. In contrast, the Washington court, far from attempting to apply the spirit of this Court's rulings, stretched them as far as possible in *Goodrich* and ignored them altogether here.

E. The added factor in the transactions of the second class does not make them taxable.

The transactions of the second class were handled in the same manner except that a Chevrolet "branch office" in Seattle, consisting of one man and his secretary, expedited the delivery of vehicles to Chevrolet dealers in a portion of the State and assisted them in other ways (R. 58-59). These activities, like those of the market agent in *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 437 were "in aid of the shipment and sale of merchandise in that (interstate and foreign) commerce." As such, the Chevrolet branch office rendered a service which was a part of the interstate movement of goods. Its activity is an inseparable part of that commerce and, though taxable on its net income properly apportioned, *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, is immune from an unapportioned tax on the gross receipts of such commerce, *Norton Company v. Department of Revenue*, 340 U.S. 534.

This Court's *per curiam* affirmance, 352 U.S. 806, of the decision of the Washington Supreme Court in *Field Enterprises, Inc. v. State of Washington*, 47 Wash. 2d 852, 289

P. 2d 1010, that the taxpayer there was properly assessed with this tax, does not sustain the tax here assessed. Field Enterprises operated an office in Washington, to which was attached a large corps of salesmen who solicited and took orders, received down payments, and, together with other personnel of the office, performed other services in Washington. General Motors has somewhat similar arrangements in Washington, although the number of its personnel and its local activities are only a small fraction of what Field Enterprises' were in relation to the measure of tax, and voluntarily has always paid the tax thereon. *Those arrangements and activities have no relation whatever to the activities, transactions and tax involved in this Appeal.*

F. Important Distinctions.

Certain distinctions which are pertinent to both interstate commerce and due process considerations need to be kept in mind. We mention them at this point and will not repeat them in discussing the due process question.

There are controlling constitutional differences among intrastate, interstate and extrastate businesses which have been mentioned above.

There are different rules governing different types of taxes, so that it is necessary to observe, with respect to each precedent decision, the type of tax there involved. Circumstances which will permit an apportioned net income tax or impose responsibility for collecting a use tax will not necessarily justify a franchise tax measured by unapportioned gross receipts.

The phrase "doing business" is used in three different senses for three different purposes. Very minor contacts are "doing business" sufficiently to support jurisdiction for service of process. More is needed to require qualification of a foreign corporation to "do business". Much more is required to support local taxation as a local business.

SECOND QUESTION—INTERSTATE COMMERCE

The second question is the narrow one whether the Washington statute unconstitutionally discriminates against interstate commerce by arranging that an intrastate manufacturer-seller shall pay only one tax while an interstate manufacturer-seller may be required to pay two.

In separate subsections, the Washington Business and Occupation Tax statute levies taxes at the same rate on the privilege of manufacturing, RCW 82.04.240 (p. 2a, *infra*), and the privilege of selling at wholesale, RCW 82.04.270 (p. 2a, *infra*). It then exempts from the tax upon manufacturing any person who is taxable as a seller as to the same goods, RCW 82.04.440 (pp. 3a-4a, *infra*). The statute thus insures that any Washington manufacturer who sells to a Washington customer shall pay only one tax; and it seeks to lay the same tax burden upon a Washington manufacturer who makes a sale to an out-state customer and upon an out-state manufacturer who sells to an in-state customer.

The statute presents an appearance of fairness—everyone seems to pay only one tax. The fact is, however, that everyone pays only one tax to *Washington*. An out-of-state manufacturer who pays to his state a tax on the privilege of manufacturing is then met by a demand from Washington for a tax upon the privilege of making sales to customers in Washington. This case involves actual double taxation, not borne by a local competing manufacturer, for as to those vehicles manufactured in St. Louis, Missouri, and sold to Washington customers, St. Louis levies a tax on the privilege of manufacturing which is indistinguishable from Washington's tax on manufacturing. App. B, pp. 5a-6a, *infra*. Both manufacturing taxes have been held valid: *American Manufacturing Company v. City of St. Louis*,

250 U.S. 459, and *Crown Zellerbach Corporation v. State of Washington*, 45 Wn. 2d 749, 278 P. 2d 305.

This Court has often invalidated local gross receipts taxes upon a showing of risk that the state of the buyer and the state of the seller might, through different taxing techniques, impose upon interstate commerce multiple tax burdens not borne by intrastate commerce: *Adams Manufacturing Co. v. Storen*, 304 U.S. 307; *Gwin, White & Prince Inc. v. Henneford*, 305 U.S. 434, 439; *Freeman v. Hewit*, 329 U.S. 249. This unvarying constitutional principle that a state may not so discriminate against interstate commerce was reaffirmed in *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 458:

> "Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, *Memphis Steam Laundry v. Stone*, 342 U.S. 389 (1952); *Nippert v. Richmond*, 327 U.S. 416 (1946); or by subjecting interstate commerce to the burden of 'multiple taxation,' *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954); *Adams Mfg. Co. v. Storen*, 304 U.S. 307 (1938)."

Here we have more than a possible, fortuitous multiplication of burdens. We have actual double taxation through a taxing scheme carefully calculated to discriminate against interstate commerce by providing a direct commercial advantage to local business. Such discrimination is forbidden.

In *Columbia Steel Co. v. State of Washington*, 30 Wn. 2d 658, 192 P.2d 976 and *Weyerhaeuser Sales Co. v. Tax Commission*, 30 Wn. 2d 947, 192 P.2d 979, the Supreme Court of Washington itself held that an earlier version of this statute was invalid on Commerce Clause grounds because it exempted from the *wholesalers'* tax those persons

who had paid the tax as *manufacturers*. We disagree with that court's holding in *B. F. Goodrich Co. v. State of Washington*, 38 Wn. 2d 663, 231 P.2d 325, and in this case (R. 452-453), that the Legislature has cured the infirmity by merely reversing the words so as to exempt from the *manufacturers'* tax those persons who have paid the tax as *wholesalers*.[23] "Not the tax in a vacuum of words, but its practical consequences for the doing of interstate commerce in applications to concrete facts are our concern." *Nippert v. City of Richmond*, 327 U.S. 416, 431. *Cf. Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, in which just such a practical working out of a sales and use tax statute with certain exemptions was found to discriminate unconstitutionally against interstate commerce.

The Washington court makes the same error in this case that the Louisiana court made in *Halliburton:* it makes the wrong comparison. In *Halliburton*, the Louisiana court compared the use tax which Halliburton was asked to pay on equipment of its own manufacture (at full value, including labor cost) with the sales tax which a local purchaser would pay on similarly completed machinery, and found equality. As the Chief Justice observed when this Court reversed, at 373 U.S. 64, 71: "* * * the proper comparison on the basis of this record is between the in-state and out-of-state manufacturer-users." It then appeared that Halliburton was being discriminated against, because a person who manufactured such equipment within the state would be taxed on only the cost of materials.

Similarly, the Washington court compares only the selling activity of an out-of-state manufacturer with the selling activity of an in-state manufacturer (R. 452):

---

[23] RCW 82.04.440, former version, p. 3a, *infra;* current version, pp. 3a-4a, *infra.*

> "The tax in question is applicable to all who engage, within the state, in the business of making sales at wholesale. It is only that local activity which is being subjected to taxation. And the tax is imposed equally upon all who participate in the same activity within the state."

It refuses to compare the total activity of the out-of-state manufacturer with the total activity of the in-state manufacturer (R. 452):

> " 'And if Washington's statute exempts local manufacturers from paying their tax as manufacturers, providing they * * * pay it as sellers, that * * * can be of no concern to one who manufactures out of the state.' "

It *is* of concern to General Motors who manufactures out of the state because it results in double taxation not borne by the in-state manufacurer. If Washington imposed separate taxes upon manufacturing and upon selling, as it does, and required a local manufacturer-seller to pay both taxes, as it does not, General Motors would have no complaint upon this argument. It would pay its manufacturing tax to other states and its selling tax to Washington, and its in-state competitor would pay both taxes to Washington.

Such discrimination against interstate commerce is not justified by the Washington Supreme Court's observation (R. 452):

> "Those involved in interstate commerce are not forced to bear any burden not borne by those exclusively engaged in intrastate commerce, so it cannot be said that the tax is discriminatory."

Even if there were no discrimination, and in this case there assuredly is, that argument has not been acceptable to this

Court. The complete answer is found in *Freeman v. Hewit*, 329 U.S. 249, 254:

> "It [a state] cannot justify what amounts to a levy upon the very process of commerce across States lines by pointing to a similar hobble on its local trade. It is true that the existence of a tax on its local commerce detracts from the deterrent effect of a tax on interstate commerce to the extent that it removes the temptation to sell the goods locally. But the fact of such a tax, in any event, puts impediments upon the currents of commerce across the State line, while the aim of the Commerce Clause was precisely to prevent States from exacting toll from those engaged in national commerce."

It is no answer to say, as the Washington court does, that what other states do is of no concern in this case. The vice is in Washington's own statute. If all states had exactly the same tax structure that Washington has, every manufacturer would pay two taxes on the proceeds of goods manufactured in one state and sold in another, while goods manufactured in the state of sale would pay only one. It would be difficult to imagine a better scheme for imposing interstate tariffs.

The Washington court's position is not aided by its assertion that the wholesale tax is based on an activity separate and distinct from manufacturing and is imposed equally upon all who participate in that activity (R. 453). The point is that the local manufacturer-wholesaler pays one tax, while his out-of-state counterpart is exposed to the risk of a double tax on the same integrated activity of manufacturing-selling. Here we have actual double taxation because vehicles manufactured in St. Louis and subject to its gross receipts tax on the privilege of manufacturing were included in the gross receipts tax base upon which Washington demands its wholesaling tax (R. 14).

THIRD QUESTION—DUE PROCESS

The third question is whether the Washington tax as here applied is an unconstitutional denial of due process either because its reaches transactions outside Washington's territorial jurisdiction or because its measure bears no reasonable relation to activities within the state.

The decision below sustains a privilege tax measured by the entire gross receipts of an out-of-state manufacturer from wholesale sales of goods manufactured and sold out-of-state but shipped to retail dealers within the state when that manufacturer's in-state business activities related to such dealers consisted only of promotional and service efforts by traveling representatives in furtherance of the out-of-state manufacture, sale and delivery. From the time of receipt and acceptance of an order to consummation by delivery of product and receipt of payment, every step on General Motors' part in each of the classes of transactions in dispute is performed at an office, warehouse or factory outside the state (R. 46-60).

The opinion of the Washington Supreme Court lays aside these facts by saying (R. 450):

> "Although the mechanical aspects of the wholesale sales of General Motors to retail dealers occur outside of the state, the substance of each transactions occurs in Washington *where the customer is located and where the demand for the manufactured products exists,* in very large degree, as a result of General Motors promotional activities." (Emphasis added.)

The substance of the holding of the Supreme Court of Washington is that an unapportioned tax measured by gross receipts may be exacted for the privilege of having

customers in the state, provided only that there are within the state—first, the customer; second, some minimal presence by the taxpayer within the state, including national advertising developed and placed without the state (R. 450). On the contrary, "• • • due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax," *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 344-45.

The wholesale sales upon which the Court below sustained the tax were not made in Washington but elsewhere. Levying the tax on such sales is an unwarranted projection of state power beyond its borders and a taking of property without due process of law. Such taxation was struck down in *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327 in which this Court held that Arkansas could not impose a sales tax upon sales of goods in Tennessee for delivery by common carrier into Arkansas, following solicitation of orders by traveling salesman in Arkansas. The Court said, 322 U.S. 327, 330:

> "• • • in this case the Tennessee seller was through selling in Tennessee. We would have to destroy both business and legal notions to deny that under these circumstances the sale—the transfer of ownership—was made in Tennessee. For Arkansas to impose a tax on such transaction would be to project its powers beyond its boundaries and to tax an interstate transaction."

All that has been done here within the jurisdiction is (1) to beam in national advertising placed without the jurisdiction; (2) to watch and advise the retail dealers (customers) in the conduct of their business; and (3) to have customers within the jurisdiction. It is this last point on which the Court below founders. It equates the having of customers with an obligation to the state. An obligation for

what? The protection and benefits for which the state is entitled to be reimbursed all go to the customers (who pay for them in their own taxes). No protection or benefits are given to General Motors merely by reason of the fact that retail dealers, or in turn their retail customers, resident in the jurisdiction provide a "market" for its products.

It is a violation of due process for a state to tax activities and transactions beyond its borders, or to impose a tax the measure of which does not bear a reasonable fiscal relationship to the protection and benefits conferred by the state on the intrastate activities which give rise to the tax. *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435.[24] This Court there stated, at page 444:

> "That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and bene-

---

[24] Other courts have recognized that due process and equal protection considerations prevent the imposition of unapportioned gross receipts taxes upon activities which are conducted only in part within the taxing jurisdiction. The decision of the Supreme Court of California in *City of Los Angeles v. Belridge Oil Company*, 48 Cal. 2d 320, 309 P. 2d 417, is directly in conflict with the decision of the Washington Supreme Court in this case, and is particularly interesting in that the business there involved was confined entirely to California with no interstate aspects. It holds that, as a matter of due process and equal protection, Los Angeles may impose its gross receipts tax upon only that portion of receipts arising from selling activities carried on within and without the city as are fairly attributable to the portion of such activities carried on within the city. The Supreme Court of Illinois, which had been reversed in part by this Court in *Norton Company v. Department of Revenue*, 340 U.S. 534, later held in *Automatic Voting Machine Corp. v. Daley*, 409 Ill. 438, 100 N.E. 2d 591, that extensive sales promotion activities, the delivery of bids, the passage of title to the goods sold, the installation and servicing of the machines and the giving of instruction in their operation, all by non-resident employes temporarily in the state, did not constitute the business of making sales in the state. In New York City, the enabling act and the ordinance themselves provide for apportionment. *Gulf Oil Corp. v. Joseph*, 307 N.Y. 342, 121 N.E. 2d 360; *U. S. Steel Corp. v. Gerosa*, 7 N.Y. 2d 454, 166 N.E. 2d 489.

> fits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return."

The J. C. Penney Co. satisfied this measure because it was engaging in substantial intrastate business to which the dividend income sought to be taxed was fairly attributable.

On the contrary, General Motors' business, insofar as these transactions are concerned, is carried on entirely through manufacturing and distribution activities in other states, with only incidental contacts within the State of Washington. It is arbitrary and unreasonable to require General Motors, whose primary business is the manufacture of motor vehicles from such basic materials as steel and cloth, to pay the same tax that would be payable if all such activity were in Washington. This is an entirely different situation from that illustrated by *International Shoe Co. v. State of Washington*, 326 U.S. 310. Although the principal issue in that case was whether the State of Washington had any jurisdiction at all over the taxpayer as for service of process, the Court went on to hold that the tax in that case was valid. It was an unemployment compensation tax measured by the wages of employes permanently in the state and who would look to that state for any unemployment benefits for which they might become eligible.

A tax otherwise violates due process if it is not properly apportioned to business done in the taxing jurisdiction. *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123. The North Carolina statute imposed a tax measured by apportioned net income, but the apportionment formula attributed 80 per cent of the taxpayer's income to North Carolina whereas it appeared that in fact no more than 17 per cent actually arose there. The result was unconstitutional. The

result here is much more aggravated. The tax applies to one hundred per cent of receipts, and while we have no precise measure of the amount attributable to in-state activities, it is obvious that it cannot be more than a tiny fraction of one per cent.

This Court has never held that an unapportioned gross receipts tax could be imposed for the privilege of doing business in a jurisdiction where there was no office participating in the business, and has frequently held to the contrary. *Norton Company v. Department of Revenue*, 340 U.S. 534. Until now, a local office, sufficiently substantial to be a "separable local business," has been the *sine qua non* for this type of tax.

The Washington Supreme Court has erred, not only in finding a "taxable incident," but in holding that, there being such an incident, the measure of the tax based upon that incident is constitutionally immaterial. This Court has held to the contrary, notably in *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, involving this very tax. In that case it said, at page 438:

> "While appellant is engaged in business within the state, and the state courts have sustained the tax as laid on its activities there, the interstate commerce service which it renders and for which the taxed compensation is paid is not wholly performed within the state. A substantial part of it is outside the state where sales are negotiated and written contracts of sale are executed, and where deliveries and collections are made. Both the compensation and the tax laid upon it are measured by the amount of the commerce—the number of boxes of fruit transported from Washington to purchasers elsewhere; *so that the tax, though nominally imposed upon appellant's activities in Washington, by the very method of its measurement reaches the entire interstate commerce service rendered both*

> *within and without the state and burdens the commerce in direct proportion to its volume.*" (Emphasis added.)

Although couched in interstate commerce terms, *Gwin, White & Prince* is eloquent in its denunciation of an improper measure in reasoning which is equally appropriate to due process.

As Professor Hartman points out, "territorial limitations on the power of a State to tax have been consistently recognized before as well as since the Fourteenth Amendment."[25] Although since adoption of that Amendment state attempts to tax extraterritorial values have been curbed as violations of its due process clause, the same result was consistently achieved earlier on the principle that the jurisdiction of any state is limited to persons, things, and events within its own boundaries.

As applied to taxation, the principle developed in the earlier cases was very well expounded by the unanimous Court in *New York, Lake Erie & Western Railroad Company v. Pennsylvania*, 153 U.S. 628, speaking through Mr. Justice John Marshall Harlan, at page 646:

> "No principle is better settled than that the power of a State, even its power of taxation, in respect to property, is limited to such as is within its jurisdiction. *State Tax on Foreign-held Bonds*, 15 Wall. 300, 319; *Railroad Co. v. Jackson*, 7 Wall. 262; *St. Louis v. Ferry Co.*, 11 Wall. 423; *Delaware Railroad Tax*, 18 Wall. 206."[26]

---

[25] Paul J. Hartman: "State Taxation of Interstate Commerce," Dennis & Co., Inc. (1953), Library of Congress, #53-11622, at page 15.

[26] To the same effect, *Hays v. The Pacific Mail Steamship Co.*, 17 How. 596, in 1855.

The question there was whether a New York corporation doing business in Pennsylvania could be compelled to withhold a Pennsylvania tax validly imposed upon Pennsylvania citizens from interest payments made in New York. Conceding that the state could impose such a requirement upon a domestic corporation under some circumstances, the Court said, at page 646:

> "—it does not follow that the State may impose upon foreign corporations, because of their doing business in that State * * *, any duty in respect to the mode in which they shall perform their obligations in other States.
>
> "The New York, Lake Erie and Western Railroad Company is not subject to regulations established by Pennsylvania in respect to the mode in which it shall transact its business in the State of New York."

The foregoing quotation points up the principle that a tax on transactions—and that is the substance of the tax here—may be imposed only by an authority which has jurisdiction over the *transaction*, as distinguished from the *person* of the taxpayer. Near the other end of the scale is *International Shoe Co. v. State of Washington*, 326 U.S. 310, in which the tax was validly imposed because, although the state had only the most tenuous relation to the taxpayer, the *transactions* taxed—the performance of an employment contract—were wholly within its geographical domain.

The real reason for the assertion of the tax against General Motors is the presence of customers in the state and not the quantity or quality of General Motors' activities within the state. Under such circumstances, it is clear that the tax asserted bears no reasonable "relation to protection, opportunities and benefits given by the state" to Gen-

eral Motors. In fact, the privileges sought to be taxed are granted and protected by the United States Constitution, not by the State of Washington, and are exercised almost entitrely in other states. The state has not "given anything for which it can ask return".

CONCLUSION

Appellees State of Washington, et al., have assessed against appellant General Motors Corporation a "business and occupation tax" measured by gross receipts purportedly "for the act or privilege of", RCW 82.04.220, "engaging within this state in the business of making sales at wholesale", RCW 82.04.270. The taxed receipts were from the manufacture and sale of goods wholly without the state, the related in-state activities being merely promotional. There was no related intrastate business. The first class of transactions was in no way related to any in-state office. The activities of the in-state office related to the second class of transactions were principally expediting interstate shipments and an integral part of the interstate commerce.

The assessments are invalid because they impose a franchise tax for the privilege of engaging in pure interstate commerce. Such taxes are "invalid without regard to measure or amount."—*Alpha Portland Cement Co. v. Massachusetts*, 268 U.S. 203, 217; *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602; *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 458.

The assessments are invalid because, if the minimal activities related to the purportedly taxed business of wholesaling which are carried on in Washington can be subjected by Washington to a tax measured by unapportioned

gross receipts, so can the much greater portions of the same business transacted in other states, thus exposing the commerce to multiple burdens merely because it is interstate commerce. *Nippert v. City of Richmond*, 327 U.S. 416. There is here no separable local business. *Norton Company v. Department of Revenue*, 340 U.S. 534.

The assessments are invalid because, as to some of the transactions there is actual double taxation, and as to the balance the possibility of double taxation, by reason of the separate taxation of manufacturing and of wholesaling and the exemption from one of the taxes of a local taxpayer who pays the other. *Freeman v. Hewit*, 329 U.S. 249; *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64.

The assessments are invalid because they reach transactions wholly without the state with only minimal in-state contacts. *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434. This violates the due process clause of the Fourteenth Amendment, *McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, and wholly apart from that Amendment is an unconstitutional extension of state power beyond its territorial limits, *New York, Lake Erie & Western Railroad Company v. Pennsylvania*, 153 U.S. 628.

The assessments are invalid because, being measured by unapportioned gross receipts from activities carried on almost entirely without the state, they are out of all reasonable proportion to activities within the state and to the protection and benefits conferred on them. *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123; *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435.

As the opinion shows, the judgment below rests entirely upon the economically and constitutionally untenable theory

that taxes should be paid to the "market state" for the privilege of having customers therein. If allowed to stand it would do great damage to established relationships, create unsuspected liabilities for past transactions in Washington and other states, in some cases extending far back because of lack or inapplicability of statutes of limitation, and constitute a new barrier to interstate commerce.

The Judgment of the Supreme Court of Washington should be reversed and remanded with directions to refund the taxes and interest paid, with interest, and to enjoin further attempts to assess and collect this tax with respect to Appellant's similar transactions, past and future.

Respectfully submitted,

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit, Michigan, 48202;

DEWITT WILLIAMS,
1440 Washington Building,
Seattle, Washington, 98101,
Attorneys for Appellant.

WILLIAMS, LANZA, KASTNER & GIBBS,
Seattle, Washington,
Of Counsel.

APPENDIX A

STATUTES

CHAPTER 82.04 OF THE REVISED CODE OF WASHINGTON[1]

82.04.040 *"Sale", "casual or isolated sale."* (c) The word "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration • • •. (Laws of 1945, Chap. 249, Sec. 1, P. 731; Laws of 1949, Chap. 228, Sec. 2, P. 817; RCW 82.04.040, Vol. 8, P. 3)

• • • • • •

82.04.060 *"Sale at wholesale," "wholesale sale."* (e) The term "sale at wholesale" or "wholesale sale" means any sale of tangible personal property and any sale of or charge made for labor and services rendered in respect to real or personal property, which is not a sale at retail; (Laws of 1945, Chap. 249, Sec. 1, P. 733; Laws of 1949, Chap. 228, Sec. 2, P. 819; RCW 82.04.060, Vol. 8, P. 5)

• • • • • •

82.04.070 *"Gross proceeds of sales."* The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and for services rendered without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any de-

---

[1] The tax periods involved in this action are from January 1, 1949 through June 30, 1953. The text of the statutes is that in effect on January 1, 1949, except that RCW 82.04.295, which increased the tax rate, was enacted in 1951. Subsequent statutory amendments through June 30, 1953 and the Revised Code of Washington (RCW) references are cited following the text. None of these amendments changed the meaning or substance of the statutes insofar as pertinent to the issues involved in this Appeal except for the 1950 amendment to RCW 82.04.440 which is set forth in full.

duction on account of losses; (Laws of 1945, Chap. 249 Sec. 1, P. 733; Laws of 1949, Chap. 228, Sec 2, P. 819; RCW 82.04.070, Vol. 8, P. 6)

• • • • •

82.04.220 *Business and occupation tax imposed.* Section 4. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be, as follows: (Laws of 1943, Chap. 156, Sec. 1, P. 487; Laws of 1949, Chap. 228, Sec. 1, P. 814; Laws of 1950, Extraordinary Session, Chap. 5, Sec. 1, P. 7; RCW 82.04.220, Vol. 8, P. 9)

• • • • •

82.04.240 *Tax on manufacturers.* (b) Upon every person engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-quarter of one per cent;

The measure of the tax is the value of the products so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state; (Laws of 1943, Chap. 156, Sec. 1, P. 487; Laws of 1949, Chap. 228, Sec. 1, P. 815; Laws of 1950, Extraordinary Session, Chap. 5, Sec. 1, P. 7; RCW 82.04.240, Vol. 8, P. 10)

82.04.270 *Tax on wholesalers.* (e) Upon every person except persons taxable under subsection (d) above[2] engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one per cent; (Laws of 1943, Chap. 156, Sec. 1, P. 488; Laws of 1949, Chap. 228, Sec. 1, P. 816; Laws of 1950, Extraordinary Session, Chap. 5, Sec. 1, P. 8; RCW 82.04.270, Vol. 8, P. 11)

• • • • •

[2] This subsection deals with wholesalers of grain.

82.04.295 *Temporary surtax imposed.* From and after the first day of November, 1951, until the thirtieth day of April, 1953[3] there is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed by this chapter and as a temporary increase thereof, a surtax in the amount of twenty percent of the tax payable under this chapter. (Laws of 1951, Second Extraordinary Session, Chap. 28, Sec. 1, P. 116; RCW 82.04.295, Vol. 8, P. 12)

• • • • •

82.04.440—prior to amendment in 1950. *Persons taxable on multiple activities.* Section 6. Every person engaging in activities which are within the purview of the provisions of two or more of paragraphs (a), (b), (c), (d), (e), (f), and (g) of section 4, shall be taxable under each paragraph applicable to the activities engaged in: Provided, however, That persons taxable under paragraphs (a) or (b) of said section shall not be taxable under paragraphs (c) or (e) of said section with respect to making sales at retail or wholesale of products extracted or manufactured within this state by such persons.[4] (Laws of 1943, Chap. 156, Sec. 3, P. 496; Laws of 1949, Chap. 228, Sec. 2-A, P. 823; Laws of 1950, Extraordinary Session, Chap. 5, Sec. 2, P. 9; Laws of 1951, Extraordinary Session, Chap. 9, Sec. 1, P. 12; RCW 82.04.440, Vol. 8, P. 17)

• • • • •

82.04.440 *Persons taxable on multiple activities.* Section 6. Every person engaged in activities which are within the purview of the provisions of two or more of paragraphs (a), (b), (c), (d), (e), (f), and (g) of section 4,

---

[3] Temporary surtax continuously extended, increased and made permanent at the rate of seventy-six per cent by Laws of 1961, Chap. 293, Sec. 2, P. 2361; RCW 82.04.296, Vol. 8, P. 12.

[4] Paragraph (a) imposed the tax on the business of "extracting" and paragraph (b) imposed the tax on the business of "manufacturing". Persons taxable as extractors or manufacturers were exempt under this section from the retailer's tax imposed by paragraph (c) and from the wholesaler's tax imposed by paragraph (e).

shall be taxable under each paragraph applicable to the activities engaged in: Provided, however, That persons taxable under paragraphs (c) or (e) of said section shall not be taxable under paragraphs (a), (b), or (d) (2) of said section with respect to extracting or manufacturing of the products so sold.[5] (Laws of 1950, Extraordinary Session, Chap. 5, Sec. 2, P. 9; Laws of 1951, Extraordinary Session, Chap. 9, Sec. 1, P. 12; RCW 82.04.440, Vol. 8, P. 17)

* * * * *

82.04.500 *Tax part of operating overhead.* Section 14. It is not the purpose of this title that the taxes herein levied upon persons engaging in business shall be construed as taxes upon the purchasers or customers, but it is the intention that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons engaging in business. (Laws of 1935, Chap. 180, Sec. 14, P. 721; RCW 82.04.500, Vol. 8, P. 19)

[5] This amendment, effective August 1, 1950, merely reversed the words so that a person taxable as a wholesaler or retailer is now exempt from the manufacturer's and extractor's taxes with respect to such goods sold.

APPENDIX B

CHAPTER 13 OF THE REVISED CODE OF THE CITY OF ST. LOUIS, 1948

Sec. 31. *License required; fee; deductions; license not assignable.* Every manufacturer shall, before doing, or offering to do, business as such, procure from the license collector a license therefor, under the provisions of this article. The fee for such license shall be at the same rate as merchants are required to pay for a license. • • •. (Chap. 13, Art. VII, Sec. 31, Rev. Code of City of St. Louis, 1948, Vol. 1, p. 272)

• • • • •

Sec. 32. *Comptroller to furnish blank licenses to license collector; form of license.* It shall be the duty of the comptroller to furnish the license collector with blank licenses, which license shall be charged to the license collector, and his receipt taken therefor.

This license shall be in the following form: No ... manufacturers' city license. The City of St. Louis: To all who shall see these presents, greeting: Know ye that .... have paid ....., license collector of the City of St. Louis, the sum of ..... dollars, being the license tax upon ....., as manufacturer; therefore, the said ..... is hereby authorized to manufacture the following articles, viz.: ..... except as otherwise provided by ordinance, at any one place of business within the city for the year ending on the first Monday of July, 19.., and to sell and dispose of such articles so manufactured at the same place, or any other one place in the city. In testimony whereof, I, ..., comptroller of the City of St. Louis, have hereunto set my hand this .. day of ....., 19.., ... comptroller. Attest: ....., register. Tax ....., license .....,

delivered this .. day of ....., 19.., ... license collector. (1936, §1389.) (Chap. 13, Art. VII, Sec. 32, Rev. Code of the City of St. Louis, 1948, Vol. 1, pp. 272-73)

* * * * * *

Sec. 51. *Amount of license fee; minimum fee.* The license fee to be paid every year by the merchant, (in addition to the ad valorem tax) shall be one dollar and twenty-five cents on each one thousand dollars or fractional part thereof, of sales made by such merchant; * * *. (Chap. 13, Art. VIII, Sec. 51, Rev. Code of the City of St. Louis, 1948, Vol. 1, p. 276).

APPENDIX C

PUBLIC LAW 86-272, SECTIONS 101-104, 73 STAT. 555 (15 U.S. CODE §§381-384)

Sec. 101. (a) No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after the date of the enactment of this Act, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) The provisions of subsection (a) shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

(1) any corporation which is incorporated under the laws of such State; or

(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) For purposes of subsection (a), a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

(d) For purposes of this section—

(1) the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term "representative" does not include an independent contractor.

Sec. 102. (a) No State, or political subdivision thereof, shall have power to assess, after the date of the enactment of this Act, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 101.

(b) The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection, on or before the date of the enactment of this Act, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after the date of the enactment of this Act, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

Sec. 103. For purposes of this title, the term "net income tax" means any tax imposed on, or measured by, net income.

Sec. 104. If any provision of this title or the application of such provision to any person or circumstance is held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

APPENDIX D

UNITED STATES CONSTITUTION

Art. I, Sec. 8, clause 3:

"The Congress shall have Power—

* * * * *

"To regulate Commerce * * * among the several States * * *"

Fourteenth Amendment, Sec. 1:

"* * * nor shall any State deprive any person of * * * property, without due process of law; * * *"

APPENDIX E

SECTION III OF ARTICLE 5 OF THE ILLINOIS RETAILERS' OCCUPATION TAX REGULATIONS

III. SALES OF PROPERTY ORIGINATING IN OTHER STATES.—

1. *Preliminary Comments.* In all the examples set out hereinbelow, there are three basic facts which will not be restated in the examples in the interest of avoiding repetition, but which will be assumed to be present in each of the examples. These assumed facts are the following:

a. That the property which is involved is located outside Illinois at the time of its sale (or subsequently will be produced outside Illinois);

b. that the purchaser or his representative (not an independent carrier engaged in the busineess of transporting property for hire) first receives the physical possession of the property in Illinois, and

c. that the sale is at retail and is not made as a necessary and incidental part of a transaction in which the seller is engaged in a tax-exempt service occupation.

Each type of sale will be considered on its own facts. If the sale is made by or through an Illinois place of business at which the seller sometimes makes intrastate retail sales, refer to paragraph 2 below. If the sale is made by or through an Illinois place of business at which the seller does not make any intrastate retail sales, refer to paragraph 3 below. If the sale is made by or through the

seller's place of business outside Illinois, refer to paragraph 4 below.

2. Sales Made By or Through an Illinois Place of Business at Which the Seller Sometimes Makes Intrastate Retail Sales. The seller incurs retailers' occupation tax liability with respect to his receipts from a particular sale if the sale is made by or through an Illinois place of business at which the seller sometimes makes intrastate retail sales. This happens, for example, if such a place of business either

a. makes a complete and unconditional offer to sell, which is accepted without modification by the purchaser so as to create a contract, or

b. receives an offer or counteroffer to purchase (regardless of where the seller accepts such offer or counteroffer), or

c. accepts (i.e., approves so as to create a contract) an offer or counteroffer to purchase, or

d. makes final delivery of the property in Illinois to the purchaser. (The reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)

The sale is not made by or through such a place of business if it merely engages in promotional activities in connection with the sale.

3. Sales Made By or Through an Illinois Place of Business at Which the Seller Makes No Intrastate Retail Sales. The seller may incur retailers' occupation tax liability when the sale is made by or through an Illinois place of business at which he does not make any intrastate retail sales. This

is the case, for example, where such a place of business either

a. accepts the contract of sale for the seller, or

b. receives an offer or counteroffer to purchase, which, under authority granted by the seller, can be accepted for the seller by someone in Illinois so as to create a contract (whether such authority is exercised in a particular case or not), or

c. makes a complete unconditional offer to sell, which offer is accepted without modification by the purchaser so as to create a contract, or

d. receives an order subject to acceptance by the seller outside Illinois, but the seller transfers title to the property in Illinois to the purchaser, or the seller or his representative makes final delivery of the property in Illinois to the purchaser. (The reference, immediately above, to the making of final delivery of the property in Illinois does not include the delivery of the property by the seller outside Illinois to an independent carrier for transportation directly to the purchaser.)

The seller's maintenance, in Illinois, of a place of business at which the seller makes no intrastate retail sales does not make the seller taxable in a particular case merely because such place of business engages in promotional activities in Illinois and receives an order which is subject to acceptance outside Illinois by the seller.

4. Sales Made By or Through a Place of Business Outside Illinois. No retailers' occupation tax liability will be incurred in the following situations:

a. Where a representative of the seller who reports directly to an out-of-State place of business of the seller, and who is not connected in any way with any Illinois place of

business of the seller, receives, in Illinois, an order which is subject to acceptance by the seller outside Illinois;

b. where the seller, from a point outside Illinois, makes an offer directly to the purchaser who transmits his acceptance directly to the seller outside Illinois, or

c. where the purchaser sends an offer or counteroffer to purchase directly to the seller outside Illinois and the seller accepts the offer or counteroffer outside Illinois.

In these situations, it is immaterial where title to the property passes to the purchaser. It is also immaterial how or by whom delivery of the property is made, provided that final delivery is not made by or through an Illinois place of business at which the seller does some intrastate retail selling.

In the following situations, where the sale is made by or through an out-of-State place of business of the seller, retailers' occupation tax liability will, nevertheless, be incurred:

a. Where the seller or his authorized representative accepts an order in Illinois so as to create a contract, or

b. where the order is received in Illinois on behalf of the seller and someone in Illinois has authority to accept such order so as to create a contract (whether such authority is exercised in the particular case or not).

Even though the seller's out-of-State place of business is involved in the transaction in some way, paragraph 2 or paragraph 3 of this subdivision (rather than paragraph 4) applies if an Illinois place of business of the seller receives the offer or counteroffer to purchase, or accepts the offer or counteroffer to purchase so as to create a contract, or transmits a complete and unconditional offer to sell to the purchaser, or makes the final delivery of the property in

Illinois to the purchaser. In that event, the answer to the question of whether paragraph 2 or paragraph 3 applies depends on whether or not such Illinois place of business of the seller is a place of business at which the seller does some intrastate retail selling in Illinois.

5. *Miscellaneous.* a. The foregoing examples are illustrative, but not exhaustive. Fact situations which are not specifically referred to herein may be submitted to the Department for special consideration and a ruling.

b. For use in those instances in which it may become material to determine where title to the property passes to the purchaser, the following illustrations are given:

(1) If the contract of sale provides where title is to pass to the purchaser, such contractual provision controls.

(2) If the seller contracts to (and does) ship or otherwise deliver the property from a point outside Illinois directly to the purchaser in Illinois f.o.b. the out-of-State point of origin, or f.o.b. the out-of-State point of origin freight prepaid, or f.o.b. the out-of-State point of origin freight allowed, title presumptively passes at such out-of-State point of origin to the purchaser.

(3) If the seller ships or otherwise delivers the property from a point outside Illinois to the purchaser in Illinois f.o.b. the Illinois destination, title presumptively passes in Illinois to the purchaser.

(4) If the contract of sale is silent both as to the place at which title is to pass to the purchaser and as to the f.o.b. point of the shipment or other mode of delivery, but the seller is required to pay freight or other transportation charges to the Illinois destination at which delivery is to be made to the purchaser (e.g., where the sale and delivery are made for a lump sum delivered price and the destina-

tion is in Illinois), title presumptively passes in Illinois to the purchaser.

(5) If the title would otherwise pass outside Illinois to the purchaser, this conclusion is not changed by the fact that the seller, by contract with the purchaser, reserves the title solely for the purpose of securing payment of all or a portion of the selling price.

c. It is immaterial that the purchaser or his representative subsequently takes or sends the property out of Illinois for use outside Illinois or for use in the conduct of interstate commerce after receiving physical possession of the property in Illinois.

d. The term "promotional activities," as used in this regulation, shall mean and include any activities employed by salesmen or representatives in stimulating sales, including general correspondence; the distribution of catalogs or other similar sales literature; radio, newspaper, magazine and other similar general advertising; good will calls; the interviewing of prospective customers; the solicitation of sales; and the like, but shall not include the receiving of orders, the making of contracts nor the making of complete and unconditional offers to sell to specific customers who accept such offers without modification so as to create contracts (e.g., see paragraphs 2a and 3c hereinabove).

e. If a seller makes some sales by or through an Illinois place of business at which he does some intrastate retail selling, but also makes some sales in other ways, liability or exemption as to the receipts from any particular sale will depend on the facts of that sale. If the sale is made by or through the Illinois place of business at which the seller sometimes makes intrastate retail sales, paragraph 2 above applies. If the sale is made in some other way, paragraphs 3 or 4 above apply. *(As revised July, 1955.)*

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 11 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, *Appellant,*

v.

STATE OF WASHINGTON, *et al.*, *Appellees.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEES

JOHN J. O'CONNELL,
Attorney General for the State of Washington,
Temple of Justice, Olympia, Wash.

JOHN W. RILEY,
Special Assistant Attorney General,
320 Central Bldg., Seattle, Wash.

JAMES A. FURBER,
TIMOTHY R. MALONE and
LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Bldg., Olympia, Wash.

Attorneys for Appellees.

STATE PRINTING PLANT OLYMPIA, WASH., 1964

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON, *et al.*, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEES

JOHN J. O'CONNELL,
Attorney General for the State of Washington,
Temple of Justice, Olympia, Wash.

JOHN W. RILEY,
Special Assistant Attorney General,
320 Central Bldg., Seattle, Wash.

JAMES A. FURBER,
TIMOTHY R. MALONE and
LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Bldg., Olympia, Wash.

Attorneys for Appellees.

STATE PRINTING PLANT OLYMPIA, WASH. 1964

INDEX

	Page
QUESTIONS PRESENTED	7
First Question—Interstate Commerce	8
Second Question—Interstate Commerce	9
Third Question—Due Process	9
STATUTES AND CONSTITUTIONAL PROVISIONS	10
COUNTERSTATEMENT OF THE CASE	11
Introductory Comment	11
Promotion and Maintenance of the GM Retail Dealer Organization—Concept and Purpose of the Quality Dealer Organization	12
Maintenance of the Quality Dealer Organization—The Dealer Selling Agreement	13
Maintenance of the Quality Dealer Organization—In-State Activities of Local and Resident Members of the General Motors Field Organization	15
1. District Manager	15
2. Service Representative	17
Maintenance of the Quality Dealer Organization—General Duties and In-State Activities of Non-resident General Motors Personnel	18
1. Zone Manager	18
2. Zone Business Management Manager	19
3. Zone Parts and Service Manager	20
4. Zone Used Car Manager (Chevrolet Division Only)	20
Activities of Other General Motors Divisions or Subsidiaries	21
1. General Motors Parts Division	21
2. General Motors Acceptance Corporation	21
3. United Motors Service Division	22
In-State Aspects of the Actual Sale	22
1. The Ordering Process	22
2. The Delivery Process	24
Categories of Transactions Used to Measure the Taxes in Question	24
1. Chevrolet Class A Transactions	25
2. Chevrolet Class B, Pontiac and Oldsmobile Transactions	25
3. General Motors Parts Transactions	26

Page

SUMMARY OF ARGUMENT 27
Nature of the Tax 27
First Question—Interstate Commerce 28
Second Question—Interstate Commerce 30
Third Question—Due Process 30

ARGUMENT 31
I. NATURE OF THE TAX 31
A. The Tax is a Tax upon Solely In-State Business Activities 32
B. The Use of Sales Made in Interstate Commerce as the Measure of the Tax Does not Change the Incidence of the Tax 34
C. The Tax in Question is not Invalid as a Levy on the Privilege of Engaging in Interstate Commerce (In Answer to General Motors' Argument: pp. 34-39) 35
D. Economic Aspects (GM Br. 17-34) 38

FIRST QUESTION—INTERSTATE COMMERCE 43
A. The Tax Neither Discriminates Against Interstate Commerce Nor Exposes the Interstate Commerce Involved to Multiple Burdens (GM 39-45) 44
B. The Commerce Clause Does Not Require an In-state Office Through Which Sales Are Channeled as a Prerequisite to the Tax in Question (GM Br. 45-55) 50

SECOND QUESTION—INTERSTATE COMMERCE 55
Analysis of General Motors' Argument 56
Halliburton Oil Well Cementing Co. v. Reily, distinguished 59

THIRD QUESTION—DUE PROCESS 62

CONCLUSION 68

CITATIONS

Adams Manufacturing Co. v. Storen, 304 U. S. 307 (1938) 48, 60
American Manufacturing Co. v. City of St. Louis, 250 U. S. 459 (1919) 27, 34, 58
Crown Zellerbach Corp. v. State, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954) 32, 33, 34
Field Enterprises, Inc., v. State, 47 Wn. (2d) 852, 289 P. (2d) 1010 (1955), aff. per curiam, 352 U. S. 806 (1956) 27, 29, 30, 32, 34, 36, 40, 45, 52, 53, 54, 55, 56, 62, 63, 65, 66, 67, 69
Freeman v. Hewit, 329 U. S. 249 (1946) 28, 33, 47, 48, 68

CITATIONS—Continued

Page

General Trading Co. v. State Tax Commission, 322 U. S. 335 (1944) 42
B. F. Goodrich Co. v. State, 38 Wn. (2d) 663, 231 P. (2d) 325 (1951), cert. den. 342 U. S. 876 (1951) 27, 32, 34, 36, 41
Gwin, White & Prince, Inc., v. Henneford, 305 U. S. 434 (1939) 44, 45, 46, 48, 55, 65
Halliburton Oil Well Cementing Co. v. Reily, 373 U. S. 64 (1963) 30, 59, 60, 61, 68
International Harvester Co. v. Department of Treasury, 322 U. S. 340 (1944) 42
International Shoe Co. v. Washington, 326 U. S. 310 (1945) 53
McLeod v. J. E. Dilworth Co., 322 U. S. 327 (1944) 42
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157 (1954) 60
Nippert v. City of Richmond, 327 U. S. 416 (1946) 29, 44, 47, 52, 67, 68
Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc., 358 U. S. 450 (1959) 53, 60
Norton Co. v. Department of Revenue, 340 U. S. 534 (1951) 27, 28, 31, 34, 36, 38, 40, 41, 43, 45, 47, 48, 50, 52, 53, 54, 55, 57, 58, 62, 63, 65, 66, 67
Spector Motor Service, Inc. v. O'Connor, 340 U. S. 602 (1951) 27, 35, 36, 37
U. S. Steel Corp. v. State, 51 Wn. (2d) 224, 316 P. (2d) 1099 (1957) 32, 33
West Publishing Co. v. McColgan, 328 U. S. 823 (1946) .. 53
West Point Wholesale Grocery Co. v. City of Opelika, 354 U. S. 390 (1958) 46, 61
Western Livestock v. Bureau of Revenue, 303 U. S. 250 (1938) 34
Wisconsin v. J. C. Penney Co., 311 U. S. 435 (1940) 62

STATUTES

Revised Code of Washington

RCW Chapter 82.04 10
RCW 82.04.220 ..... 10, 11, 32, 37
RCW 82.04.270 10
RCW 82.04.270(1) 11
RCW 82.04.440 55
RCW 82.04.500 39

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON, *et al.*, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEES

QUESTIONS PRESENTED

A fair and objective statement of the "Questions Presented" in terms of "the terms and circumstances of the case" (as required by Rule 40 (1) (d) (1)) is difficult because the facts and circumstances of this case are unique and complex.

Nevertheless, the appellees feel compelled to submit their own statement of the "Questions Presented," and chiefly for three reasons. First, in General Motor's statement, the nature of the Wash-

ington state tax in question is not accurately spelled out. Secondly, the character and extent of the appellant's relevant operations in the State of Washington are not sufficiently described. And thirdly, the key questions raised in this case in the light of past decisions of this Court are not sufficiently pinpointed. Accordingly, the appellees (hereinafter referred to as the "State") present the following restatement of the questions.

1. Is a Washington tax which is imposed upon persons for the act or privilege of engaging in business activities within the state and which is measured by the gross proceeds from wholesale sales to customers within the state, violative of the commerce clause of the federal constitution as an undue burden upon interstate commerce when applied to a multi-state corporation whose in-state business activities in furtherance of such sales, include:

(a) Development and maintenance of a quality retail dealer organization, with regular and constant contact with each dealer at the dealer's place of business, for the purpose of administering the taxpayer's contract with each dealer ("Dealer's Selling Agreement") which sets governing standards for all aspects and phases of the dealer's operations;

(b) Securing orders for the division's products;

(c) Assisting the dealers in all aspects and phases of their operations, including the training of their sales force; controlling the used product inventory; customer relations; car service operations;

(d) Regular and frequent training schools,

sales meetings, and other meetings to improve various aspects of the dealer's business and thus increase wholesale sales to the dealer;

(e) Other local activities of other divisions and subsidiaries of the taxpayer which are part of the taxpayer's overall automotive wholesale operations?

Subsidiary to this question are the following:

(1-a) Does the commerce clause of the federal constitution require, as a prerequisite for imposing such a tax, the existence of an in-state office through which are channeled, in some manner, the sales used to measure such a tax?

(1-b) If the answer to (1-a) is in the affirmative, does the existence of an in-state office, the function of which is to expedite deliveries to in-state purchasers, meet this requirement of the commerce clause?

2. Is such a tax violative of the commerce clause of the federal constitution on the grounds that the tax exposes interstate commerce to a risk of multiple burdens and double taxation because the tax, which is applicable to all who engage in similar selling activities within the State of Washington, fails to tax Washington manufacturers with respect to their manufacturing activities, if the gross proceeds from sales of such manufactured products have been included in the measure of the Washington tax on selling activities?

3. Does such a tax imposed under the circumstances described in the first question deprive

General Motors of its property without due process of law in violation of the fourteenth amendment?

Subsidiary to this question are the following:

(3-a) Does the tax unconstitutionally impinge upon transactions outside Washington's territorial jurisdiction?

(3-b) Does the tax lack reasonable fiscal relationship to taxpayer's in-state activities?

(3-c) Does the due process clause of the fourteenth amendment of the federal constitution require, as a prerequisite for imposing such a tax, the existence of an in-state office through which are channeled, in some manner, the sales used to measure such a tax? If so, does the existence of an in-state office the function of which is to expedite deliveries to in-state purchasers meet this requirement?

STATUTES AND CONSTITUTIONAL PROVISIONS

The basic Washington statutes involved in this proceeding are sections 220 and 270 of chapter 82.04 of the Revised Code of Washington. (Cited "RCW"; e.g., "RCW 82.04.220.") These are here quoted in part in order to show, at the outset, the nature and structure of the Washington tax involved.

RCW 82.04.220 imposes the tax in question by the following language:

> "There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall

be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

The "measure" of the tax involved here is defined in the second sentence of RCW 82.04.220, *supra*, as the products of the "* * * rates against value of products, gross proceeds of sales or gross income of the business, as the case may be."

The "rate" of taxation, by which the measure is extended, is prescribed for the wholesaling category by RCW 82.04.270(1); i.e.:

> "Upon every person except persons taxable under subsection (1) of RCW 82.04.260 [relating to wholesaling of grain] engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent."

(During part of the audit period involved, the rate was .003 rather than .0025.)

COUNTERSTATEMENT OF THE CASE

Introductory Comment

The counterstatement set forth hereinbelow is offered by the State in order to identify the business activities engaged in within the State of Washington by General Motors (appellant), and to ascertain the relationship between those activities and the sales included in the measure of the tax involved in this case.

The State of Washington finds two general objections to General Motors' statement of the case. First, certain portions of the statement are misleading, if not actually inaccurate. Secondly, and more importantly, the statement as a whole gives at most the "bare bones" of a case in which, the State feels, the flesh is every bit as important as the bones.[1]

This restatement, then, will be primarily supplementary and secondarily corrective in nature. And, in order to give the clearest possible statement, and to avoid any risk of making questionable summaries or implications, frequent quotations from the actual record will be used.

Promotion and Maintenance of the GM Retail Dealer Organization—Concept and Purpose of the Quality Dealer Organization

The general and most basic function of the General Motors zone and field personnel who engaged in in-state activities in this case relate to the organization, development and maintenance of the General Motors retail dealer organization within the State of Washington. This is true for both the top positions (zone manager) and the bottom positions (district manager) in the zone organization, as stated by a Chevrolet zone manager:

> "A. Well, my responsibilities as Zone Manager generally are to secure and maintain a quality dealer organization of Chevrolet

[1] "It is possible to proliferate the detail but we think that doing so adds nothing to an understanding of the case and, on the contrary, tends to obscure the essentials. * * *" GM Br. p. 10. This statement is not surprising. To a great extent, this whole lawsuit resolves itself into a dispute over what the "essentials" are.

> dealers; to administer and promote programs, plans and procedures that will cause that dealer organization to give Chevrolet the best possible business representation in this area." (R. 76.)

And again:

> "A. Well, the duties [of the district manager] essentially are the maintenance of a quality organization—dealer organization—and the follow-through and administration of programs, plans and procedures within their district, that will help to develop the dealer organization, for the best possible financial and sales results." (R. 109.)

The end objective of maintaining this quality dealer organization is to promote and maintain the trade name of the particular division involved (R. 229) and thus "* * * to maintain within the industry a position comparable with what the division expects to obtain in business." (R. 80), or to obtain "* * * a fair share of the available market." (R. 177.)

Maintenance of the Quality Dealer Organization—the Dealer Selling Agreement

The dealer selling agreement is executed by General Motors and its dealer, and sets forth the relationship between them (R. 15). (The functions of the General Motors field organization in implementing this agreement and ensuring dealer compliance with it are described hereinafter, p. 15.)

The dealer's place of business, including salesroom, service station, parts and accessories facilities, and used car facilities, must be satisfactory to

General Motors, and General Motors is accordingly given the right to inspect such facilities at any reasonable time; moreover, the dealer may not establish a new location or branch office without General Motors' written consent (Pl. Ex. 2; R. 261, 71).

General Motors sets the capital requirements which must be met by the dealer, and requires the use by the dealer of uniform accounting systems established by General Motors. Also, the dealer must permit inspection of his financial accounts and records, and sales and service records by General Motors, and must submit monthly detailed financial and operating statements (Pl. Ex. 2; R. 262, 71).

The dealer must properly develop the sales potential in the territory assigned to him by General Motors, and must maintain a sales staff adequate to develop that potential (Pl. Ex. 2; R. 262, 71).

The dealer must handle customer complaints with a view to protecting the goodwill of both the dealer and General Motors (Pl. Ex. 2; R. 262, 263, 71). He must carry an adequate stock of parts (Pl. Ex. 2; R. 263, 71), buy any special tools developed by General Motors which General Motors deems necessary for proper service to car owners, employ a mechanical staff which General Motors deems adequate, perform work for General Motors' account to satisfy General Motors' warranty obligations on new cars, and permit inspection by General Motors of all service facilities and all stocks of parts and accessories (Pl. Ex. 2; R. 264, 71).

Maintenance of the Quality Dealer Organization—In-State Activities of Local and Resident Members of the General Motors Field Organization

The district managers and service representatives reside out in the field, away from the zone office. During the audit period in question, the Chevrolet, Oldsmobile, and Pontiac divisions had altogether, on an average, approximately twenty such employees, resident and/or principally employed in the State of Washington (R. 241). They each have an assigned territory comprising a section of the zone, and reside within that territory (R. 5, 17; D. Ex. 11; R. 393, 405-406, 210).

The service representative covers a wider geographical territory than the district manager (R. 17, 230). Thus, the Pontiac division has three district managers working within the state, one spending full time and the other two spending half their time there (R. 186); it also has one service representative working half time within the state (R.17). (This ratio may vary with the division involved. Thus, the Oldsmobile division has working within the state one less district manager but one more service representative than does Pontiac (R. 225-226)).

1. District Manager

The district manager has no office as such within the territory, but operates out of his home (R. 193), using his residence telephone for business purposes (R. 17), and using his residence itself for receipt of mail (R. 92).

The district manager's function in obtaining the monthly projections will be described, *infra*, p. 23; in addition to this function, he has other more general functions. As a former Chevrolet district manager testified:

> "Well, we have a number of different departments in the Chevrolet set-up. The District Manager is responsible to carry out the physical work of putting those things into effect with the dealers." (R. 138.)

Thus, the district manager serves as the zone manager's main direct contact with the dealer at the dealer's place of business (R. 17), and contacts the dealers

> "* * * in a supervisory or advisory capacity to see that they have the proper sales organization and to acquaint them with the Divisional sales policies and promotional and training plans to improve the selling ability of the sales organization. * * *" (Pl. Ex. 1; R. 246, 71.)

The district manager's function includes assisting the dealer's sales manager in organizing and training a sales force (Pl. Ex. 1; R. 246, 71), distributing promotional material (R. 140), and assisting in controlling used car inventory (Pl. Ex. 1; R. 246, 71).

He contacts the dealers assigned to him at least once a month, and may contact some of the larger dealers as often as once a week (R. 163, 194). Each district manager may have anywhere from twelve to thirty dealers in his district (R. 148, 185-186, 220-221).

2. Service Representative

The service or parts representative assists the zone parts and service manager, and in this capacity helps the dealer's service department on any problem involving General Motors' products (R. 187). He checks, in detail, on the adequacy of the dealer's service department to see that the dealer is complying with the selling agreement, and to see that General Motors' products are obtaining the best possible representation in the public mind (R. 227). ("Details" might include such things as a lack of cleanliness and the need for a new paint job in the dealer's place of business (R. 227)). If requested by the dealer or thought necessary by zone personnel, assistance to the dealer's service department may include a service clinic, at the dealer's place of business, wherein zone service personnel work with the dealer's service personnel to show the latter how to run properly the service department (R. 223).

The service representative also helps the dealer in handling any difficult customer complaints (Pl. Ex. 1; R. 247, 71), and in this function contacts owners of General Motors products who have registered complaints with the dealer or with General Motors itself (R. 187). In addition, he does some amount of training of the dealer's service personnel (R. 187; Pl. Ex. 1; R. 247, 71).

Maintenance of the Quality Dealer Organization—General Duties and In-State Activities of Non-resident General Motors Personnel

1. Zone Manager

The zone manager is in charge of all zone activities, and has the general responsibility of acquiring and maintaining a quality dealer organization to represent General Motors' products (R. 76, 185). As part of his efforts to maintain this organization, he sees dealers

> "* * * quite frequently, at least every sixty days in meeting form, and between those meetings we have other group meetings, to a point where in some cases I see some of our dealers almost every month in the year. * * *" (R. 110.)[2]

---

[2]The testimony quoted above was obtained from the Seattle Chevrolet zone manager; but testimony by the Portland Pontiac zone manager is quite consistent with this. See esp. R. 187 and 188. Also, the Pontiac zone manager described the various purposes of the field meetings as follows:

"A. Prior to the announcement of a new model—a national announcement to the public of a new Pontiac we conduct sales training schools, more or less for the salesmen and the dealers, to acquaint them with the new features of the automobile, and we conduct service schools for the dealer's service department employees.

"* * *

"Q. These sales training meetings that you have, are those conducted at the District level?

"A. Not exactly the District level. We normally hold them in central places, Seattle, Spokane, Walla Walla, Yakima [all in Washington state] in order to accommodate the dealers in that particular area, lessen their travel.

"Q. All right. Now aside from the annual showing or preshowing meetings that you have just described, do you have any other meetings during the course of the year, any promotion or sales training meetings that you offer from your zone office?

"A. Periodically as the occasion arises we do have the same type of meeting, perhaps comparison meetings, for salesmen and

These contacts take place approximately half the time at the dealer's place of business, and the other half of the time at the zone level (R. 110).

2. Zone Business Management Manager

The zone business management manager has the responsibility of assisting dealers in developing more efficient management in all departments of their business. (Pl. Ex. 1; R. 245, 71).

He is the head of the business management department in the zone, the function of which is

"1. To build and maintain profitable dealers amply capitalized.

"2. To promote the sale of a constantly increasing volume of Pontiac products.

"3. To enable our field organization to make more efficient dealer contacts." (Pl. Ex. 3; R. 273, 71.)

His principal mission is to counsel with the dealers from the standpoint of their financial condition (R. 106) and he works "* * * between the office and the dealers, and contacts the dealers." (R. 106.) For instance, he is to be present, along with the zone manager if deemed advisable, at the

---

dealers to point out the advantages in the Pontiac product over the competition.

"Q. And service meetings that you have in advance of showings, do you also conduct service meetings in between showings during the year?

"A. Oh, yes, service meetings are—service schools, rather, are held throughout the year.

"Q. And the purposes of those schools are what?

"A. To train dealer mechanics in the intricacies of the Pontiac product." (R. 200.)

dealer's place of business when the dealer's monthly plan of operation is set up (Pl. Ex. 3; R. 274, 71).

3. Zone Parts and Service Manager

The zone parts and service manager is responsible for making certain that owners of General Motors' products have adequate service available for their cars. (Pl. Ex. 1; R. 245, 71). His duties include the education of the dealer's service personnel through schools and other contacts, promotion of company service policies, and helping the dealer in handling difficult customer complaints (Pl. Ex. 1; R. 245, 71). These duties are partly carried out by contacts within the State of Washington (R. 186).

The purpose of having an adequate parts and service program is to increase customer favor generally, and this program is thus a part of the overall sales effort and public relations program (R. 95).

4. Zone Used Car Manager (Chevrolet Division Only)

The responsibility of the zone used car manager is to work with the dealers in assisting them to promote the best possible display of the used cars they have for sale, to follow the best possible merchandising methods, and to follow the best methods of reconditioning used cars (R. 122). For example, one program for promoting proper reconditioning methods involves actually going into the dealership with a truck and demonstrating how the reconditioning work should be done (R. 123).

The purpose of the used car program is to promote a better volume of new cars by increasing the volume of used car sales (R. 123).

Activities of Other General Motors Divisions or Subsidiaries

1. General Motors Parts Division

This division maintains warehouses in both Seattle, Washington, and Portland, Oregon (R. 18). (General Motors protests only inclusion of receipts from sales from the Portland warehouse in the tax base, not the inclusion of receipts from Seattle sales.) In connection with this Seattle warehouse, the Parts Division employed, during the audit period in question, between twenty and twenty-eight persons (R. 241).

Although the division is structurally and organizationally independent of the other General Motors divisions (R. 13), a Chevrolet zone manager testified:

> "* * * insofar as we are concerned in Chevrolet, we consider it as part of our division—at least that is the way that I have always looked at it. Now I may be wrong on it." (R. 93.)

The purpose of having an adequate parts program is to increase customer favor generally; and the program is thus part of the overall sales effort and public relations program (R. 95).

2. General Motors Acceptance Corporation

This subsidiary of General Motors is engaged in the business of financing the sale of General Mo-

tors products, and, through another corporate subsidiary of its own, Motors Insurance Corporation, insures them against physical damage (R. 13). General Motors Acceptance Corporation frequently handles financing arrangements for cars sold by General Motors to Washington dealers (R. 16), although a considerable number of the dealers are financed by institutions other than General Motors Acceptance Corporation (R. 197).

However, State's Exhibit 13 (R. 438, 243), showing the office space occupied by General Motors Acceptance Corporation in Seattle, Spokane, and Tacoma, Washington, and the office space occupied by Motors Insurance Corporation in Seattle and Spokane, was excluded by the trial court (R. 243).

3. United Motors Service Division

> "This Division provides warranty service on certain specialized automotive equipment such as Delco Remy, starting, lighting and ignition, etc. Dealers are to handle warranty transactions with them on those items not stocked by the G.M.P.D. or factory warehouses. * * *" (Pl. Ex. 3; R. 306, 71.)

Defendant's (State's) Exhibit 13 (R. 438, 243), showing the two warehouses of this division in Seattle, was excluded by the trial court (R. 243).

In-State Aspects of the Actual Sale

1. The Ordering Process

It is true that, technically, orders for the General Motors products directly involved in this case are generally received from dealers only by the

zone office, and are approved only by this office or the factory. (R. 17, 18.) (In a few cases, the district manager receives the orders and forwards them to the zone office (R. 18)).

However, in all cases "securing orders" is the function of the local district manager (Pl. Ex. 1; R. 246, 71). In performance of this function, the district manager, in conjunction with the dealer, works out once each month projections of the dealer's estimated needs. The district manager and the dealer make these projections on a thirty, sixty, and ninety-day basis, although basically they work on the coming month for which orders are to be submitted (R. 166). And "Basically, estimated requirements can be construed as a purchase order." (Pl. Ex. 5; R. 341, 71.)

These projections are by car model and include projections for accessories and equipment, as well as for the cars themselves (Pl. Ex. 5; R. 341, 71).

The relationship between these projections and the actual orders can be seen from the following testimony:

> "* * * Once that projection and estimate has been made, and a meeting of minds between the district manager and the dealer, or his representative, arrived at, the dealer then places individual orders with us on a separate form for the merchandise. Those separate forms, of course, are to allow him to specifically specify color option, and things of that character." (R. 124.)

"Q. I take it that these [projections] are negotiated by the district managers generally at the dealer's place of business?

"A. The transaction takes place in the dealership." (R. 125.)

2. The Delivery Process

General Motors implies that its obligations, so far as delivery is concerned, end when the automobile is placed on board the common carrier at its factory or warehouse (GM Br. 5-9).

It is true that orders are filled by shipment from the factory or warehouse, f.o.b. point of shipment. However, General Motors, and not the dealer, pays the freight charges to the carrier, General Motors later being reimbursed by the dealer; General Motors, moreover, has the right to select the mode of transportation (see, however, R. 263) and the right to charge the dealer average freight rates on a national, regional, zone or single market basis, rather than the actual freight rates (Pl. Ex. 2; R. 256, 71). Also, claims for loss or damage in transit are made by the dealer to General Motors, not to the carrier (Pl. Ex. 2; R. 257, 71).

Categories of Transactions Used to Measure the Taxes in Question

The taxes in question were measured by the gross proceeds from wholesale sales by General Motors to its retail dealers in the State of Washington under the following categories:

1. Chevrolet Class A Transactions.

2. Chevrolet Class B, Oldsmobile and Pontiac Transactions.

3. General Motors Parts Transactions.

All of these transactions occurred within an audit period from January 1, 1949, through June 30, 1953 (R. 13).

1. Chevrolet Class A Transactions

All of the activities described above were performed in connection with Chevrolet Class A sales. In addition, a Seattle branch office, operating under direction of the Portland zone office, participated in these sales principally by expediting deliveries (R. 58-59). It should be noted here that since January 1, 1954, General Motors has maintained a "zone office" in Seattle for its Chevrolet division. Its activities are taxed, and such taxes since 1954 are not in dispute here (R. 18). Such taxes are measured only by the gross proceeds of sale to General Motors' Washington dealers. Chevrolet Class A sales involve a total amount of approximately $220,000 in taxes (R. 7, 9).

2. Chevrolet Class B, Pontiac and Oldsmobile Transactions

All of the activities described above are performed in connection with Chevrolet Class B, Pontiac, and Oldsmobile sales. Thus, the extent or degree of local activity for which the tax is being imposed is the same as in Chevrolet Class A except for participation in these transactions by an in-state office which expedites deliveries. This category of

transactions involves a total amount of approximately $53,000 (R. 8, 10, 11).

3. General Motors Parts Transactions

The gross proceeds from sales of parts to General Motors dealers in Washington have been separated from the other categories. General Motors parts are sold to dealers in the State of Washington through two parts warehouses: one in Washington and one in Oregon. If the warehouse in Seattle does not stock a particular item, it is shipped from Portland (R. 18-19).

Although General Motors Parts Division does not have a field organization similar to that of other divisions, personnel from other divisions who do work with the retail dealers carry out General Motors policies relating to parts by means of the enforcement of the provisions of the Dealer Selling Agreement (Pl. Ex. 2; R. 263, 264, 71).

The sales of General Motors parts distributed from the Seattle warehouse have been included in the measure of General Motors' tax. This portion of General Motors' tax is not in dispute here. However, General Motors disputes the inclusion of the gross proceeds from sales of parts to retail dealers in Washington which were distributed from General Motors' Portland, Oregon, warehouse (R. 19).

This category of transactions involves a total amount of approximately $14,000 (R. 8), plus other unspecified amounts included in the previous category.

SUMMARY OF ARGUMENT

NATURE OF THE TAX

The tax in question is one imposed solely upon local business activities, and is measured by the gross proceeds of sales proceeding from those local activities. Thus, the tax is not a tax upon transactions or sales and the use of transactions or sales as a measure of the tax does not change the incidence or character of the tax. *Norton Co. v. Department of Revenue*, 340 U. S. 534 (1951); *Field Enterprises, Inc., v. State*, 352 U. S. 806 (1956); *American Manufacturing Co., v. St. Louis*, 250 U. S. 459 (1919). The attempt of General Motors to mischaracterize the tax only confuses analysis of the constitutional issues involved by confusing the tax's incidence with its measure.

Moreover, the tax is not a levy on the privilege of engaging in interstate commerce, and thus does not fall within the decision of this Court in *Spector Motor Service Inc. v. O'Connor*, 340 U. S. 602 (1951), and other related cases. The inapplicability of *Spector* has been clearly determined by the characterization of this tax by the State Supreme Court in *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325, and *Field Enterprises, Inc. v. State*, 47 Wn. (2d) 852, 289 P. (2d) 1010. And this characterization was confirmed by this court in its *per curiam* affirmance of the latter decision. 352 U. S. 806.

The reason for the inapplicability of *Spector* is based upon the fact that the tax here involved is a

tax upon business activities, rather than a franchise tax.

Although the tax here involved is one measured by gross proceeds, this fact alone does not make it unconstitutional or inherently discriminatory against either intrastate or interstate commerce. The power of states to use this type of tax, under proper constitutional limitations, is beyond question. *Norton Co. v. Department of Revenue, supra.* And General Motors' broadside attack against this type of tax is completely beside the point.

The Washington State Supreme Court in this case did not adhere to any fallacious "market state" concept, but rather applied the principles laid down by this Court in *Norton Co. v. Department of Revenue, supra,* and thus, in applying those principles, analyzed the nature and extent of General Motors' in-state activities in approaching the local market. The tax was imposed, not because of its customers within the state, but because of the nature and extent of the in-state activities in obtaining sales from these customers.

FIRST QUESTION—INTERSTATE COMMERCE

A. A tax imposed upon local selling activities by the market state and measured by the gross receipts of the sales proceeding from these activities is not inherently discriminatory, and is thus not inherently invalid. *Norton Co. v. Department of Revenue, supra.* But the rule is not the same for outshipments. *Freeman v. Hewit,* 329 U. S. 249; and the

fact that Washington may validly impose its tax here does not lead at all to the conclusion that all other states having a connection with the sales involved can impose a similar tax measured by the same gross receipts. Thus, there is no danger whatsoever of double taxation.

B. A tax imposed upon local selling activities in the market state and measured by gross receipts of the sales proceeding from these activities may be imposed even when the activities are connected solely with interstate sales. *Field Enterprises, Inc. v. State*, 352 U. S. 806. Thus, there is no constitutional necessity for the existence of a separable strictly intrastate business which is somehow connected with the interstate sales used to measure the tax in question. Nor is there any constitutional necessity for such a connection with an in-state office when the taxpayer, because of the nature and extent of its activities within the State, has localized and established itself there as permanently and just as definitely as if it did so through a fixed physical establishment. And this is precisely what General Motors has done in this case. Thus, it is completely unrealistic to try to bring General Motors' activities within the rule laid down in *Nippert v. City of Richmond*, 327 U. S. 416, relating to itinerant drummers.

However, if a fixed physical establishment is required, such a requirement is met by Chevrolet's branch office in Seattle, which participated in the Chevrolet Class A transactions by participating in

the delivery process. *Field Enterprises, Inc. v. State, supra.*

SECOND QUESTION—INTERSTATE COMMERCE

General Motors in effect complains that it is being discriminated against because a Washington manufacturer who is taxed on wholesaling activities in the State of Washington (with respect to products both manufactured and sold here) is not taxed on the local manufacturing activities involving the same products. This complaint, however, in effect demands that the State of Washington at least partially guarantee that General Motors' total tax burdens in the various states in which it operates cannot exceed the tax burdens of a strictly local manufacturer-wholesaler. The fallacy in General Motors' argument is illustrated by its misreliance upon *Halliburton Oil Well Cementing Co. v. Reily*, 373 U. S. 64, in which this Court struck down a Louisiana tax which was *per se* discriminatory against property brought in from outside the state. This Court in *Halliburton* in no way did what General Motors now asks it to do, viz., strike down a perfectly uniform tax in one state simply because that state does not levy any other sort of tax, on completely different activities, to which General Motors may be exposed in other states.

THIRD QUESTION—DUE PROCESS

The Washington tax in question is not an unwarranted projection of state taxing power over sales or transactions which take place outside its borders; for the tax is imposed only on local activities, not on sales or transactions. Moreover, the de-

tailed nature and broad extent of General Motors in-state activities in connection with such sales fully justifies the use of such sales as the measure of the tax here. The due process considerations present in *Norton Co. v. Department of Revenue, supra*, clearly show this. For in this case, the local activities performed in connection with the sales used to measure the tax were even more essential to the transactions involved and more extensive than the activities in *Norton*.

ARGUMENT

Nature of the Tax

General Motors frequently mischaracterizes the nature of the tax involved in this case. For instance, it is asserted that the tax is a tax imposed "* * * on the privilege of engaging in exclusively interstate commerce." (GM Br. 38; see, also, GM Br. 16, 37, 39); "A direct unapportioned tax on gross receipts from interstate commerce * * *" (GM Br. 39); and "* * * on the privilege of doing things * * * which are done almost exclusively without the state * * * thus attempting to tax privileges * * * [granted by] Oregon, California, Missouri and Michigan. * * *" (GM Br. 16.) For this reason it is necessary to examine at the very outset what is primarily a question of state law rather than federal law, namely, the exact nature of the tax involved.

A. The Tax is a Tax Upon Solely In-State Business Activities

The Washington business and occupation tax, as consistently construed and applied by the Washington State Supreme Court, is in law and in actual operative effect a tax upon local business activity. *Cf. Field Enterprises, Inc. v. State*, 47 Wn. (2d) 852, 289 P. (2d) 1010, aff. per curiam, 352 U. S. 806 (1956); *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325, cert. den., 342 U. S. 876 (1951); *U. S. Steel Corp. v. State*, 51 Wn. (2d) 224, 316 P. (2d) 1099 (1957); *Crown Zellerbach Corp. v. State*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954). The words of the statute provide that the tax is "* * * levied and shall be collected from every person * * * for the act or privilege of engaging in business activities. * * *" within the State of Washington. (RCW 82.04.220.)

Thus, the tax here is imposed upon General Motors solely for the act or privilege of engaging in business activities within the State of Washington. (RCW 82.04.220.) And the tax is measured "* * * by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be." (RCW 82.04.220.) The Washington State Supreme Court, in the opinion below, construed RCW 82.04.220 as authorizing the state to tax "* * * only that which

---

"* * * The tax is measured solely by appellant's local wholesale and retail activities. No part of the tax is attributable to its manufacturing or other out-of-state activities. * * *" *U. S. Steel Corp. v. State*, 51 Wn. (2d) 224, 226, 316 P. (2d) 1099.

takes place within its borders, * * * measuring the tax by transactions which relate sufficiently to the activities in question to be within the requirements of the due process clause." (R. 451.)

Negatively stated, the tax is not imposed upon transactions or sales. Proceeds from transactions or sales are used solely as a measure of the tax, and then only when they are derived from in-state buyers and are attributable to the in-state activity being taxed.

It is important to note in this regard that since January 1, 1954, the Chevrolet Division of General Motors has had a Seattle Zone which is headquartered in Seattle, Washington, and covers part of Idaho and all of Alaska, as well as most of Washington (R. 14, 73). Proceeds from sales to General Motors' Alaska and Idaho dealers are *not* included in the measure of the tax upon the activities of this office, despite the fact that the "transactions" involved have occurred there for the most part. The same would be true where automotive parts are shipped by common carrier to such out-of-state dealers from stocks in the Seattle warehouse of the Parts Division of General Motors. See *Crown Zellerbach Corp. v. State*, 45 Wn. (2d) 749, 278 P. (2d) 305 (1954). In that case the Washington Supreme Court, on the basis of *Freeman v. Hewit*, 329 U. S. 249 (1946), interpreted the commerce clause and the Washington statutes as forbidding the inclusion of such outgoing sales in the measure of the tax.

B. The Use of Sales Made in Interstate Commerce as the Measure of the Tax Does Not Change the Incidence of the Tax.

The difference between the statutory incidence of a tax and the statutory measure of that tax has consistently been recognized by this Court, and has been given important constitutional significance in sustaining state taxes. Thus, in *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951); and *Field Enterprises, Inc. v. State*, 352 U. S. 806 (1956), a tax imposed upon local business activities was sustained even when certain types of interstate sales were used to measure the tax upon the local activities being taxed. Likewise, in *American Manufacturing Co. v. St. Louis*, 250 U. S. 459 (1919), proceeds from interstate sales were allowed to be used to measure a tax upon local manufacturing activities. See, also, *Western Livestock v. Bureau of Revenue*, 303 U. S. 250 (1938). In each of these cases, this Court recognized that the legal incidence of the tax was local activities, and only local activities; and it further recognized that the fact that interstate sales were used to measure the tax did not change the incidence of the tax. This is not to say, of course, that a tax cannot offend by an improper measure; clearly it can, and the Washington Supreme Court has consistently recognized this principle in *Crown Zellerbach Corp. v. State, supra*; *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325, cert. den. 342 U. S. 876 (1951); and this case (R. 451). But it only obscures the issues and renders the analysis of the constitu-

tional problems more difficult if the distinction between incidence and measure is not kept clearly in mind; and the attempts of General Motors to confuse the two must not be allowed to obscure this important distinction.

C. The Tax in Question is not Invalid as a Levy on the Privilege of Engaging in Interstate Commerce (In Answer to General Motors' Argument: pp. 34-39)

General Motors strenuously attempts to strike down the tax in question by bringing it within the ambit of this Court's decision in *Spector Motor Service v. O'Connor*, 340 U. S. 602 (1951), and other related cases.[4]

The tax in *Spector* was struck down by this Court because, in the words of this Court:

> "* * * The courts of Connecticut have held that the tax before us attaches solely to the franchise of petitioner to do interstate business. * * *" 340 U. S. 609.

And the franchise was not a proper "constitutional channel" (340 U. S. 608) through which the tax could be imposed, although the tax was properly apportioned to in-state activities of a motor carrier engaged solely in interstate hauling.

Is the Washington tax of the same type as the Connecticut tax? That is, does it involve the same constitutional channel? To answer this question, we

[4]For the convenience of this Court, the State has generally followed the order of discussion used by General Motors. However, because General Motors' argument based upon *Spector* involves a question now under discussion, viz., the precise nature of the incidence of the tax under state law, in addition to commerce clause questions, the argument is treated here rather than in regular order.

must look to the decisions of the Washington State Supreme Court, just as this Court looked to the decisions of the Connecticut Court in *Spector*; and with such a look, we see that the Washington State Supreme Court clearly considers the Washington tax to be different. In *B. F. Goodrich Co. v. State, supra*, the Court expressly stated that *Spector* was not applicable to the case before it, which involved the applicability of the same tax involved in this case to a multi-state business making interstate sales to its Washington customers (See 38 Wn. (2d) at 677). The Court stated that the case was to be governed by *Norton v. Dept. of Revenue, supra*, rather than *Spector*. The only conclusion to be drawn from this is that the State Supreme Court considers the Washington tax to involve the same type of "constitutional channel" as was involved in *Norton*, rather than the type involved in *Spector*.

Again, in *Field Enterprises, Inc. v. State*, 47 Wn. (2d) 852, 856, 289 P. (2d) 1010 (1955), the State Supreme Court stated that *Spector* was not applicable to a case in which the taxpayer was engaged in business activities within the state which involved *solely* interstate sales. But most importantly, on appeal to this Court, the argument based on *Spector* was squarely raised again. (See Jurisdictional Statement, *Field Enterprises, Inc. v. State of Washington*, No. 214, October Term, 1956, p. 5) And this Court affirmed the State Supreme Court *per curiam*, citing *Norton* as controlling. 352 U. S. 806 (1956).

The reason for these results can be found in the statutory language itself, which states that the tax is to be "* * * levied and * * * collected from every person * * * for the act or privilege of engaging in business activities." RCW 82.04-.220.

The State does not deny the presence of the word "privilege" in the statute. But unlike the Connecticut tax involved in *Spector*, the Washington tax does not attach solely to the "privilege," if it can be said to attach to it at all. As stated by the State Supreme Court, "These *activities* provide an *incident* upon which the taxing statute operates." (R. 447-448.) (Emphasis supplied.) And again: "The tax is imposed upon business activity within the state. The measure of the tax is the proceeds from the sales attributable to that activity." (R. 453.)

In short, *Spector* can be applied to this case only at the cost of completely ignoring two Washington State Supreme Court decisions and one decision of this Court, all of which clearly faced and rejected the precise argument made by General Motors here concerning the nature of the Washington tax. And by the same token, much of General Motors' argument can be disposed of by beginning with a logical analysis of the legal incidence of taxation. Having identified the tax incidence as in-state "business activity" we can now proceed with the resolution of the essential constitutional questions.

D. Economic Aspects (GM Br. 17-34)

It is extremely difficult to respond to the arguments presented by General Motors under the heading of "Economic Aspects" because the State considers them, for the most part, irrelevant. The primary purpose of this discussion, therefore, will be simply to show why they are irrelevant.

Generally, the arguments constitute a broadside attack on *all* business taxes measured by gross receipts, be the business solely intra-state or be it multi-state. And, with commendable consistency and candor, the attack is culminated by a salvo against this Court's decision in *Norton v. Dept. of Revenue*, 340 U. S. 534 (1951), the leading decision involving the constitutionality of a business tax measured by gross receipts derived from interstate sales (GM Br. 32-34). And this shows the general reason for the irrelevance of these arguments; that is, *Norton* constitutes settled law, which can be unsettled—to use the words of General Motors—only by "* * * upsetting understandings which tax collectors and taxpayers alike have had for years. * * *" (GM Br. 31.) Nevertheless, each argument will be dealt with in order.

Re: Three Types of Taxes (GM Br. 31)

The State agrees with General Motors that net income taxes, sales and use taxes, and business taxes measured by gross receipts should be carefully distinguished, (GM Br. 17-19); in fact, the State has already devoted much discussion to the difference

between a tax *on* sales and a tax of which sales are only the measure. (See, *supra*, p. 32.) However, General Motors goes on to state that the tax in this case does not come into court with "clean hands" since it is reflected in company-wide prices, and thus comes out of buyers generally, rather than only from buyers in Washington (GM Br. 19). The relevance of this consideration is hard to understand.

Property taxes, for example, imposed upon General Motors' factories and offices in Michigan or California are undoubtedly also reflected in company-wide prices. But this is certainly not a helpful consideration in determining whether or not such property taxes are constitutional. Moreover, if "clean hands" is a consideration, it should be pointed out that General Motors' argument, in part at least, as to the economic impact of *this* tax, is not based upon fact. True, RCW 82.04.500 provides that the tax here involved is to be absorbed by the vendor as part of its overhead. But this statute has hardly been complied with by General Motors. Over the vigorous objection of General Motors' counsel, the State attempted to show (in the trial court) that during portions of the audit periods involved in this case General Motors passed on to its dealers in Washington the taxes which it now wants refunded, billing the dealers for "Washington Handling Charges" (R. 212, 213, 214).

Re: Pyramiding: "Basic Unsoundness of this Tax" (GM Br. 19-21)

General Motors states that the first of the two fiscal and economic problems which the State Supreme Court did not take into consideration is the basic unsoundness of the tax in question, and that failure to take this into consideration "* * * no doubt contributed confusion to the State Court's deliberations." (GM Br. 21.)

The State submits that taking this irrelevant problem of possible tax pyramiding into consideration would certainly have contributed confusion to the deliberation of the State Supreme Court. For General Motors shows no relationship whatsoever between the problem of alleged discrimination between strictly intrastate businesses and the alleged discrimination against interstate commerce which General Motors states is involved in this case.

But more importantly, General Motors contends that this Court has recognized this type of tax to be "* * * inherently discriminatory against interstate commerce * * *" (GM Br. 20), and therefore we presume, to be inherently unconstitutional. But if this is so, how can the cases of *Norton Co. v. Department of Revenue*, 340 U. S. 534 (1951), and *Field Enterprises, Inc. v. State*, 352 U. S. 806 (1956), stand? Both cases will be thoroughly discussed later; we only note here that in both, this Court sustained a tax of exactly this type, i.e., a tax imposed on local selling activities and measured by interstate sales attributable to these activities.

In its discussion of the "second obstruction"

(GM Br. 21) to the State Supreme Court's reaching a correct result, General Motors attacks the alleged "preoccupation" of the Court with the "market state" concept and the "general tone" of the Court's opinion (GM Br. 21) in this case, as well as the "sentiment" expressed by the Court in the prior case of *B. F. Goodrich Co. v. State*, 38 Wn. (2d) 663, 231 P. (2d) 325. (GM Br. 21.)

The State fails to see how this sort of legal psychoanalysis contributes to an understanding of the issues involved in this case. Both in this case and in *Goodrich*, the State Supreme Court was simply attempting to apply the principles laid down by this Court in *Norton Co. v. Department of Revenue*, *supra*. And the State Supreme Court in this case was no more "preoccupied" with a "market state" concept than was this Court in *Norton*. The State Court was "preoccupied," if one may so use the term, with the nature and extent of the taxpayer's in-state activities; but the same can be said of this Court in *Norton*.

And quite properly so. For in *Norton*, and in this case, the crucial problem revolves around the means by which the seller approaches the local market, and the nature of the in-state activities involved in obtaining sales from that market. It does not contribute to a solution of this problem to launch into a long, though admittedly interesting, discussion of the "fallacious economic concept of the 'market state.'" (GM Br. 23.)

However, the State feels that at least one assertion contained in that discussion by General Motors should not be left unchallenged, for it is quite relevant to the problem at hand.

The quotation from the opinion of Mr. Justice Rutledge, concurring *General Trading Co. v. State Tax Commission*, 322 U. S. 335, and *International Harvester Co. v. Department of Treasury*, 322 U. S. 340, and dissenting in *McLeod v. J. E. Dilworth Co.*, 322 U. S. 327, at page 361, does not apply solely to sales and use taxes, as General Motors would have us believe. (GM Br. 23.) The *International Harvester* case involved the Indiana gross receipts tax, which, as General Motors itself points out (GM Br. 33), is basically similar to the Washington tax involved in this case. This point is important, because Mr. Justice Rutledge's analysis has little, or nothing, to do with the fact that sales or use taxes fall upon the purchaser rather than the seller.

Rather the analysis shows why, in the distribution of power to impose taxes upon interstate transactions or, as here, to measure taxes by interstate transactions, the state of market should be given preference over the state of origin. The reason, of course, is that this preference for the market state tends to equalize competitive conditions, both as between interstate sellers from different states of origin, and as between interstate and strictly intrastate sellers.

This consideration is the basis for a meaningful "market state" concept, and, as we have shown, this embodies precisely the approach which the State of Washington takes in its taxing policy. (See p. 33, *supra*.) But this is not the same "market state" concept which General Motors discusses and for which it says the State Supreme Court has "fallen." (GM Br. 23.)

Re: Impact of the Decision; Effect on Local Governments and Competition. (GM Br. 31-34.)

General Motors states that the decision of the Washington State Supreme Court, if allowed to stand, would do enormous damage to interstate commerce. (GM Br. 32.) Yet, almost immediately thereafter it states that the type of tax involved herein is becoming a thing of the past, and strongly urges this Court to hasten its demise and, apparently, to do so by overruling *Norton Co. v. Department of Revenue*, 340 U. S. 534. (GM Br. 33.) This is a most surprising juxtaposition of arguments.

However, the main point to be noted here is this: the question of whether or not alternative types of taxes may be available to the state is not at all relevant to the issues in this case. The relevant question is whether or not *this* Washington tax, as applied in *this* case, meets constitutional requirements. And to this question we now proceed.

FIRST QUESTION—INTERSTATE COMMERCE

"As has been so often stated but nevertheless seems to require constant repetition, not

all burdens upon commerce, but only undue or discriminatory ones, are forbidden." *Nippert v. City of Richmond*, 327 U. S. 416, 425.

A. The Tax Neither Discriminates Against Interstate Commerce Nor Exposes the Interstate Commerce Involved to multiple burdens. (G M Br. 39-45.)

Under this heading, we wish to treat two arguments made by General Motors under two separate headings. For the two arguments are so closely related that they should logically be treated together.

The first argument, viz., that the tax is invalid as a levy on unapportioned gross receipts derived from interstate commerce (GM Br. 39-42), is based squarely upon the language of this Court in *Gwin, White & Prince, Inc., v. Henneford*, 305 U. S. 434, which, in summary states that where a tax is imposed on in-state activities, and is measured by amounts derived from both in-state and out-of-state activities, but the measure is not apportioned to the in-state activities, such tax is unconstitutional because its measure exposes interstate commerce to the risk of multiple burdens to which local commerce is not exposed. (See GM Br. 41-42.)[5]

General Motors' argument is that the tax in question is precisely such a tax; that is, since the tax is measured by receipts derived from both in-state and out-of-state selling activities, and since these receipts are not apportioned to the in-state activities, the tax must fall.

[5]We thus see that the first argument is not really distinct from the second argument, i.e., the argument on multiple burdens.

This argument, however, cannot stand in the face of *Norton Co. v. Department of Revenue*, 340 U. S. 534, for the tax there was also precisely such a tax. In that case, an Illinois tax upon retailers was measured by the gross receipts derived from certain interstate sales, such sales having been produced in great part by activity taking place outside the taxing state, i.e., in Massachusetts, where the orders for the sales in question were accepted and filled. *But in Norton there was no such apportionment of the measure of the tax to in-state activities*, as is demanded by General Motors here. Nor was there any such apportionment in *Field Enterprises, Inc. v. State*, 352 U. S. 806 (1956), in which this Court affirmed, *per curiam*, on the basis of *Norton*, a decision of the Washington State Supreme Court involving the precise tax now in question. In that case, the State Supreme Court upheld this tax when imposed upon the in-state activities of a company engaged solely in the business of soliciting orders for goods to be sold in interstate commerce, the orders being forwarded through a Washington office to Chicago, for acceptance and filling in Chicago.

General Motors' statement, therefore, that the reasoning in the language it quotes from *Gwin, White & Prince, Inc., v. Henneford, supra*, is applicable to inshipments and has in fact been applied in such cases is simply not correct. (GM Br. 42.) *Norton* and *Field* refute this statement completely. And the one case which General Motors cites in sup-

port of this statement, *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U. S. 390, is clearly distinguishable. (GM Br. 42.)

General Motors correctly points out that this case involved a flat fee type of tax; but it neglects to point out that this flat fee applied only to merchants who delivered their goods from outside the taxing jurisdiction, while strictly local merchants were subject to a tax graduated upon their gross receipts, and in effect had, as this Court clearly pointed out, a substantially lesser tax burden than the taxpayer. The *West Point Wholesale Grocery Co.* case, in short, involved a tax structure that was inherently discriminatory against the selling activities of merchants operating from outside the taxing jurisdiction, and thus has no application whatsoever to the present case.

At this point, the precise nature of the disagreement between General Motors and the State should be clarified. The State agrees completely with the basic premise of General Motors' argument, viz., that the several states must not be allowed each to carve out from the process of interstate selling a taxable incident, and then each use the same gross proceeds of sale as the measure for each state's tax upon such an incident. Such multiple taxes would be completely intolerable. Thus, the State agrees completely with this Court in the *Gwin* case when it stated:

> "* * * Such a multiplication of state taxes, each measured by the volume of the com-

merce, would re-establish the barriers to interstate trade which it was the object of the commerce clause to remove. * * *" 305 U. S. 434, 440.

And the State agrees completely with the excerpt quoted by General Motors from *Nippert v. City of Richmond*, 327 U. S. 416, expressing substantially the same idea. (GM Br. 43-44.)

For example, it would be intolerable if the State of Massachusetts, the state of origin for the sales involved in *Norton Co. v. Department of Revenue*, *supra*, would be allowed to do what this Court in that case allowed the State of Illinois, the market state, to do; viz., to measure a tax upon the selling operations occurring in the taxing state by the gross proceeds derived from the sales involved. Indeed, it would be intolerable to allow Massachusetts to use even a portion of these gross proceeds to measure a tax upon the Norton Company's selling operations, for this too would be multiple taxation.

But the State disagrees completely with the solution to the problem of multiple taxation which General Motors suggests, viz., allowing *no* state to tax.

And the above example illustrates the precise solution which this Court appears to have worked out to solve this problem of multiple taxation. In every case in which the state of origin has attempted to impose this type of tax, or a similar tax, the tax has been struck down. *Freeman v. Hewit*, 329 U. S.

249; *Adams Manufacturing Co. v. Storen*, 304 U. S. 307; *Gwin, White & Prince, Inc. v. Henneford*, 305 U. S. 434.

General Motors states:

> "* * * Its [the Washington State Supreme Court's] decision exposes the same gross receipts to a similar tax in every state in which some part of the sales transaction happens to occur. * * *" (GM Br. 44.)

This statement is the key to General Motors' whole attempt to invalidate this tax, on the grounds that it taxes "unapportioned gross receipts," (GM Br. 39) and exposes interstate commerce to "unapportioned multiple burdens". (GM Br. 42.)

But this statement is simply not true, as the three cases just cited show.[6]

Perhaps the best analysis of the problem of multiple burdens is to be found in the concurring opinion of Mr. Justice Rutledge, in *Freeman v. Hewit*, 329 U. S. 249, 277-279.

> "* * * There is no need to give interstate commerce a haven of refuge from taxation, albeit of gross receipts or from 'direct' incidence, in order to safeguard it from evils against which the commerce clause is designedly protective. Less broad and absolute alterna-

---

[6] It is true that both *Gwin, White & Prince, Inc. v. Henneford*, 305 U. S. 434, and *Adams Manufacturing Co. v. Storen*, 304 U. S. 307, intimate that the state of origin might be allowed to impose a tax on selling operations if the measure were apportioned to in-state activities. *Freeman v. Hewit*, 329 U. S. 249, however, would not even allow an apportioned tax. And, in view of the result of *Norton Co. v. Department of Revenue*, 340 U. S. 534, the state of origin *should not* be allowed to impose any such a tax, *even if apportioned*.

tives are available and are adequate for the purpose of protection without creating the evils of total exemption.

"The alternative methods available for avoiding the multiple state tax burden may now be stated. They are: (1) To apply the Adams ruling, stopping such taxes at the source, unless the tax is apportioned, thus eliminating the cumulative burdens; (2) To rule that either the state of origin or the state of market, but not both, can levy the exaction; (3) To determine factually in each case whether application of the tax can be made by one state without incurring actual danger of its being made in another or the risk of real uncertainty whether in fact it will be so made.

"* * *

"As among the various possibilities, I think the solution most nearly in accord with the commerce clause, at once most consistent with its purpose and least objectionable for producing either evils it had no design to bring or practical difficulties in administration, would be to vest the power to tax in the state of the market, subject to power in the forwarding state also to tax by allowing credit to the full amount of any tax paid or due at the destination. This too is more nearly consonant with what the more recent decisions have allowed, if full account is taken of their effects."

And these quotations from Mr. Justice Rutledge show precisely the approach which the State of Washington follows in avoiding multiple taxation. (See p. 33, *supra*.)

B. The Commerce Clause Does Not Require an In-State Office Through Which Sales Are Channeled As a Prerequisite to the Tax in Question (GM Br. 45-55)

Having disposed of General Motors' contention that the tax here involved is "discriminatory" against interstate commerce, we must now inquire into whether it constitutes an "undue burden" on such commerce.

General Motors argues that "* * * a tax measured by unapportioned gross receipts may only be levied on a local business realistically separated from the process of interstate commerce." (GM Br. 45.) Thus, from General Motors' interpretation of *Norton* we are asked to conclude that

> "All that *Norton* requires is that the taxpayer segregate his interstate business and transactions from any local taxable business: * * *" (GM Br. 46.)
>
> "Ever since the *Norton* decision, it has been understood that an interstate seller had to have some local office or store conducting a separate intrastate business participating in its interstate sales before the seller could constitutionally become subject to this type of transaction or gross receipts tax on such sales. A local office, sufficiently substantial to be a separable and taxable business, is the *sine qua non* for this type of tax. * * *" (GM Br. 47.)

General Motors' interpretation of *Norton* differs from the conclusion reached by the State Supreme Court which concluded

> "* * * the mere physical presence of an office within the state has never been the

> sole criterion for validating a state's assessment of a tax. Conversely, absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations. * * *" (R. 449.)

General Motors asserts at page 37 that "the Washington Supreme Court does not in terms find any intrastate commerce nor any realistically separable local business." But in fact the Washington Supreme Court does quite the contrary. The Washington Court declared, among other things, that

> "* * * the substance of each transaction occurs in Washington where the customer is located and where the demand for the manufactured product exists, in very large degree, as a result of General Motors promotional activities." (R. 450.)

The assertion that there is no separate identifiable local activity within the State of Washington is quite unrealistic, we think. The activities engaged in by General Motors here, contrary to its contention, are of the broadest, most intricate and most significant variety. Beginning with the comprehensive and delicate procedure of developing and maintaining its retail dealer organization, General Motors' field personnel engage in every variety of sales and promotional effort on the local activity, all designed to stimulate the sale of its product at the retail and wholesale level. The extreme degree of control that

it has over members of its retail organization (although it may be conceded that they are legally independent of General Motors) is unique and extraordinary.

From our earlier discussion (*supra*, pp. 32-33), we have seen that the tax in this case is directed to the "in-state" business activities described above. But those activities, says General Motors, are really "promotional activities," according to Professor Beaman, and as such are exempt according to this Court's opinion in *Nippert v. City of Richmond*, 327 U. S. 416. (See GM Br. 49-52.)

The State submits that any contention that General Motors' activity here is to be likened to that of an itinerant "drummer" in *Nippert* is untenable in view of the very considerable quantity of evidence to the contrary in the record here.

Thus, *Norton Co. v. Department of Revenue*, 340 U. S. 534, and *Field Enterprises, Inc., v. State*, 47 Wn. (2d) 852, 280 P. (2d) 1010, aff. per curiam 352 U. S. 806, dispose of the same "interstate commerce" arguments now made by General Motors here. And it should be noted that *Field*, unlike *Norton*, involved no intrastate sales at all, but only activities performed solely in connection with interstate sales.

It is true that in *Norton* and *Field* the taxpayer conducted certain activities through local offices.

However, as the Washington State Supreme Court forcefully stated,

> "* * * absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the *amount and effect* of the activities involved and not the form of the operations. * * *" (R. 449.) (Emphasis supplied.)

West Publishing Co. v. McColgan, 328 U. S. 823 (1946), provides adequate authority for the Washington Court's position, and a complete answer to any argument that presence of an office is essential in order to sustain state taxing power.

> "* * * The opinion [*West Pub. Co. v. McColgan, supra*] was not grounded on the triviality that office space was given West's solicitors by attorneys in exchange for the chanceful use of what books they may have had on hand for their sales activities. * * *" *Portland Cement Co. v. Minnesota*, 358 U. S. 450 (1959), at 461.

West Publishing Company cited as one of the controlling cases, *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), which did not involve any office at all.

Although it is the State's position that presence of a local office is not an essential prerequisite to state taxing power, it should be noted that General Motors' field representatives are in effect "officed" within the state by virtue of the use of private homes for receipt of business mail and telephone calls.

Accordingly, the only factor of any significance distinguishing the *Norton* and *Field* cases from the

present factual situation (the fact that some activities are not carried on through an office, with a sign on the door, physically located in Washington) is not of sufficient importance to prevent the *Norton* and *Field* cases from being dispositive of General Motors' contentions in this appeal.

The standards of fairness applied in *Norton* are certainly more than met here. For here we have, not just mechanical forwarding, as a convenience to the customer, of orders, or breaking down of shipments of merchandise; we have instead constant and extensive in-state operations which are absolutely necessary for and indeed the key to the entire wholesaling operation.

The State turns now to the final aspect of the "First Question—Interstate Commerce." Thus, if the scope of in-state activity engaged in by a multistate business is irrelevant to the question of the limits of the State's power of taxation under the commerce clause; and if the State's power of taxation is to be decided under the commerce clause according to whether or not General Motors chooses to establish some "local office" which has something to do with the orders used to measure such a tax, then at least as to Chevrolet Class A transactions the tax is valid because General Motors established such an office in Seattle which expedited deliveries of products of Class A. (R. 18.)

General Motors argues, however (GM Br. 54), that the activities of the Chevrolet branch office are

"* * * like that of the market agent in *Gwin, White & Prince v. Henneford.*" (GM Br. 54.)

However, contrary to General Motors' assertion, *Field Enterprises* and *Norton* disposed of that contention. Thus, the in-state activities shown by the record here quantitatively and qualitatively bear more significant relation to the sales used to measure the tax here than did the in-state activities in *Norton* and *Field.* It must also be equally apparent, even to General Motors, that the activity and role of its Seattle branch office is just as significant, if not more so, than the in-state offices in *Norton* or *Field.* Furthermore, it must also be apparent to General Motors that *Gwin, White & Prince v. Henneford* is distinguishable from *Norton, Field* and this cause, because Gwin involved "out-shipments" from a producer state.

SECOND QUESTION—INTERSTATE COMMERCE

General Motors contends that the imposition of a tax, under the wholesaling category, upon its business activities in Washington is unconstitutionally discriminatory simply and solely because of one feature of the Washington tax law, found in RCW 82.04.440. (Quoted in GM Br. 3a-4a.) This feature is that, under this statute, when local business activities take place on both the manufacturing and wholesaling levels, these activities are not considered as two separate taxable incidents to the extent that the manufacture and sale of the same products are involved; rather, there is only one taxable incident.

This is accomplished by exempting from the manufacturing category of the tax those who are also taxable under the wholesaling category with respect to the same products.

This, General Motors says, produces "* * * actual double taxation, not borne by a local competing manufacturer, * * *." (GM Br. 56.) or at least "* * * possible, fortuitious multiplication of burdens. * * *," if not "* * * actual double taxation * * *" (GM Br. 57.)

And why? Because says General Motors, another taxing jurisdiction may, and in the case of the city of St. Louis actually does, levy a tax upon General Motors' manufacturing activities, thus producing a hypothetical tax burden upon General Motors which a manufacturer-wholesaler operating solely in Washington does not have to bear.

The implications of this argument are so startling that they deserve a very careful analysis.[1]

Analysis of General Motors' Argument

The first point to be noted is the exact nature and thrust of the argument. Exactly the same argu-

[1]This precise question was presented to this Court in *Field Enterprises, Inc. v. State of Washington.* (Jurisdictional Statement, p. 9: *Field Enterprises, Inc. v. State*, No. 214 October Term 1956.) This Court rejected the appellant's argument, per curiam, affirming the opinion of the Washington State Supreme Court sustaining the Washington tax. However, because of the serious implications of this argument, appellees prefer not to rely solely on this case, but to meet the argument head-on.

One implication might be noticed preliminarily here. The argument would invalidate not only the taxes involved in this case, but also the taxes which General Motors is presently paying upon its business activities involving the Seattle Parts Division Warehouse and the Seattle Zone office, simply because the products involved are manufactured outside the state.

ment could be made, and, if General Motors is to be consistent, would have to be made, even if no tax were ever imposed upon local manufacturing activities. That is, if General Motors' argument is valid, it must be valid even if Washington *never* imposed a tax on manufacturing activities, and General Motors' complaint would have to be the same if Washington failed to impose such a tax under *all* circumstances, rather than just under certain circumstances.

This can be seen from the fact that alleged competitive disadvantages which General Motors complains of would exist to exactly the same extent even if the Washington State Legislature decided to leave *all* manufacturing activities free of taxation.

General Motors concedes that everyone pays only *one tax in* Washington. (GM Br. 56.) But General Motors argues since it *may* be taxed on its out-of-state manufacturing activities by another state as well as the in-state wholesaling activities in Washington the tax here exposes it to unconstitutional "double taxation." (GM Br. 56.)

What exactly is the nature of this "double taxation" complained of? Perhaps it can best be shown by an illustration. Assume that the taxpayer involved in *Norton Co. v. Department of Revenue*, 340 U. S. 534 (1951), manufactured its products in St. Louis, Missouri, instead of Worcester, Massachusetts. Assume further that Illinois has no manufacturing tax but only the retailing tax involved in

Norton, supra. This retailing certainly would not be unconstitutional simply because Illinois levies no manufacturing tax while St. Louis does. (*Cf. American Manufacturing Co. v. City of St. Louis*, 250 U. S. 459.)

Again: assume that State A wishes to provide an incentive for the location of manufacturing industries and grants certain property tax immunities to such industries. Certainly an out-of-state manufacturer selling in State A will not be heard to complain of that State's general tax on selling activities simply because the State where *it* manufactures grants no such tax immunity as does State A.

In summary, what General Motors is really seeking by this argument is some sort of guarantee from the State of Washington that regardless of the varieties of tax systems in the various states in which it in fact operates, General Motors' total tax burden, beginning from its manufacturing operations and ending with the selling of its products in Washington, will never be more than it would be if General Motors were operating solely in Washington. This is a revolutionary suggestion and one which we think can only aid General Motors' bigness at the expense of the several states.

General Motors charges that the State Supreme Court erred in refusing to "* * * compare the *total activity* of the out-of-state manufacturer with the total activity of the in-state manufacturer * * *" (GM Br. 59.) The Court made no such error.

If by "total activity" we are asked to consider the total of all *taxes* imposed upon General Motors from Detroit to market (as to products manufactured in Detroit), are we then required to consider the total of all taxes from Seattle to market (as to products manufactured in Seattle) when determining validity of a Washington tax on manufacturers? No decision of this Court has ever imposed such a requirement.

Halliburton Oil Well Cementing Co. v. Reily, Distinguished

The fallacy in General Motors' whole argument is disclosed by its misreliance upon *Halliburton Oil Well Cementing Co. v. Reily*, 373 U. S. 64 (1963).

Halliburton is distinguished simply because the problem there is fundamentally different from that presented here. Thus in *Halliburton* this Court described the problem as follows:

> "* * * [Taxpayer] contends, however, that in this case Louisiana has departed from the norm of tax equality and imposes on the appellant a greater tax burden solely because the property it uses in Louisiana is brought from out of state. The difference in tax burden is admitted by the appellee." (373 U. S. 64, 66.)

The vice of the tax in *Halliburton* is that Louisiana, by itself, imposed upon the taxpayer a greater tax burden than it otherwise would have imposed solely because the property of the taxpayer used in Louisiana was brought in from outside the state. The unconstitutional discrimination, therefore, was

found precisely and solely in the difference between two measures used by Louisiana for the same property, this difference depending solely on whether or not the property involved came from outside the state or originated inside the state. This Court did not do what the appellant here is asking it to do; namely, strike down a general and uniform tax imposed by one state simply because the taxpayer may be exposed to another type of tax in another state.

Halliburton would be applicable if the State of Washington imposed upon General Motors a tax on its business activities at a higher rate than it imposes upon strictly local manufacturer-sellers solely because General Motors sells products manufactured outside the state. But this is precisely what the State of Washington does not do.

Re: "Multiple Burdens" and "Discrimination"

The State recognizes that the states may not discriminate in taxation

> "* * * against interstate commerce either by providing a *direct commercial advantage* to local business, * * *; or by subjecting interstate commerce to the burden of '*multiple taxation*', *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U. S. 157 (1954); *J. D. Adams Manufacturing Co. v. Storen*, 304 US 307 (1938). * * *" (*Northwestern States Portland Cement Co. v. Minnesota*, 358 US 450 (1959)) (Emphasis supplied.)

But to assert that the tax involved here produces a "direct commercial advantage," "multiple burdens"

or "discrimination" would vastly expand the meaning of the terms "direct commercial advantage" and "discrimination" and "multiple burden" as heretofore defined by this Court.

"Direct commercial advantage" for strictly local business, and "discrimination" against interstate business is illustrated by such cases as *Halliburton* and *West Point Grocery v. Town of Opelika*, 354 U. S. 390, in which the tax burdens of the state (or municipality) were lower for the strictly local business than for the multi-state or interstate business.

And the "multiple tax burden" alleged by General Motors (GM Br. 57) can be said to be real only if Washington is prohibited from measuring the Washington tax on General Motors' in-state selling activities by the sales price of General Motors' products, solely because St. Louis or some other taxing jurisdiction may have used a portion of the same gross proceeds to measure a tax on manufacturing activities.

This Court has never held that an unconstitutional "multiple burden" results simply because the same gross proceeds of sale may be used by two different states to measure two different taxes upon two completely different activities, such as manufacturing and selling.

If this is the rule of "multiple burdens," then any tax by a market state which is imposed upon the in-state selling activity of an out-of-state manufacturer and is measured by gross proceeds of sale of

the products, such as the tax in *Norton* and *Field*, would be unconstitutional, unless the market state also imposed a tax on all manufacturing. The State knows of no case of this Court laying down such a rule, and General Motors has cited none.

Third Question—Due Process

The constitutional limitation upon the state tax power under the due process clause was described generally by this Court in *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940), as follows:

> "The Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax. A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society." *Wisconsin v. J. C. Penney Co., supra*, p. 444.

This quotation points up the two key questions involved in General Motors' due process argument. First, what is the operating incidence of the tax? Second, does the measure of the tax bear a reasonable relationship to General Motors' in-state activities?

General Motors' mischaracterization of the tax as a sales or transactions tax (GM Br. 61, 67) has already been discussed, *supra*, p. 31. The purpose of this mischaracterization, however, now becomes clear: General Motors is thereby enabled to assert that the tax involved here "* * * reaches transactions outside Washington's territorial jurisdiction * * *," (GM Br. 61.)

The incidence of the tax was clearly pointed out by Chief Justice Finley, speaking for the Washington State Supreme Court:

> "* * * The activities of General Motors in Washington in relation to these sales provide a sufficient nexus upon which to base the tax. Thus, the state is taxing only that which takes place within its borders, and measuring the tax by transactions which relate sufficiently to the activities in question to be within the requirements of the due process clause." R. 451.)*

The fallacy of General Motors' assertion that Washington is taxing "transactions outside Washington" is pointed up by *Norton Co. v. Department of Revenue*, 340 U. S. 534 (1951), and *Field Enterprises, Inc. v. State*, 47 Wn. (2d) 852, 289 P. (2d) 1010, 352 U. S. 806 (1956). The fact that the tax is measured by interstate sales and transactions in which title passes outside the taxing state did not invalidate the use of such sales as a measure of taxes on

*This quotation also points up the incorrectness of appellant's assertion that the Washington State Supreme Court considered the measurement of the tax constitutionally immaterial. (GM Br. 65.)

in-state activity in those cases; and the tax here is no more a tax on out-of-state sales or transactions than the taxes there.

General Motors' alternate due process argument is based upon a second mischaracterization. Thus, General Motors says that the measure of the tax "* * * bears no reasonable relation to activities within the state." (GM Br. 61.) And General Motors mischaracterizes the "activities within the state" as follows:

> "All that has been done here within the jurisdiction is (1) to beam in national advertising * * *; (2) to watch and advise the retail dealers (customers) in the conduct of their business; and (3) to have customers within the jurisdiction. * * *" (GM Br. 62.)

This overlooks the detail of activities which "* * * pervade virtually every aspect of the retail dealers' operations * * *" (R. 450) and the regular and constant contact with the dealers in the State of Washington which this detail of activity necessarily involves. It also overlooks the function of district managers in securing orders at the dealer's place of business and much other detail described in the counterstatement of facts, *supra*.

Finally, General Motors argues that:

> "This Court has never held that an unapportioned gross receipts tax could be imposed for the privilege of doing business in a jurisdiction where there was no office participating in the business, and has frequently held to the

> contrary. *Norton Company v. Department of Revenue*, 340 U. S. 534. Until now, a local office, sufficiently substantial to be a 'separable local business,' has been the *sine qua non* for this type of tax." (GM Br. 65.)*

The question put is therefore: Does the due process clause require an in-state office as a condition precedent to the type of tax involved here, regardless of the nature and extent of the business activity being subjected to tax?

The State Supreme Court answered this foregoing question as follows:

> "* * * the mere physical presence of an office within the state has never been the sole criterion for validating a state's assessment of a tax. Conversely, absence of a local office does not render the conclusion automatic that sufficient nexus to validate a tax is lacking. The essential inquiry must be directed to the amount and effect of the activities involved and not the form of the operations. * * *" (R. 449.)

The validity of the State Court's conclusion is supported when the "amount and effect" of General Motors' in-state activities in this case are compared to the "in-state" activities in *Norton*, *supra*, and *Field Enterprises, Inc. v. State*, 47 Wn. (2d) 852, 289 P. (2d) 1010, 352 U. S. 806 (1956).

In *Norton*, the personnel at the Illinois retail outlet performed essentially two functions in con-

Elsewhere General Motors argues that even though it had an office which expedited deliveries of merchandise in the Chevrolet Class A transactions, such activities are " * * like those of the market agent in *Gwin, White & Prince, Inc. v. Henneford*, 305 U. S. 434 (1939).

nection with the transactions there in controversy. They forwarded orders to the out-of-state manufacturing plant, and broke down carload shipments into separate orders for the individual customers. In *Field*, the function of the in-state office was to supervise solicitors and to forward to the taxpayer's Chicago headquarters orders received by the solicitors. And, unlike *Norton*, the office in *Field* had absolutely no connection whatever with any kind of local sale.

In applying *Norton* and *Field* to this case, we are met with two initial questions. Is the essential question the nature and extent of the activities the taxpayer's personnel within the state? Or is the essential question whether or not these activities, whatever their nature and extent, had some connection with a local physical establishment? The State submits that the essential question under the due process clause is the first one.

General Motors' in-state deliveries here are clearly more essential to the consummation of sales of General Motors' products than merely forwarding orders and breaking down carload shipments. (See *Norton Co. v. Department of Revenue*, 340 U. S. 534.) Yet, this Court, in *Norton*, held that the local activities of forwarding orders and breaking down of carload shipments provided sufficient connections with the sales involved to allow inclusion of these sales in the measure of the tax.

Any attempt to characterize General Motors' in-state activities here as mere solicitation or drumming is answerable by reference back to our earlier

discussion of *Nippert v. City of Richmond*, 327 U. S. 416 (1946), *Supra*, p. 52.)

Moreover, aside from the vastly more significant quantity of in-state activity practiced by General Motors here, it is to be remembered that General Motors otherwise localized itself in permanent physical facilities of various divisions and subsidiaries. (General Motors' Parts Division Warehouse, United Motors Service, GMAC, and the Chevrolet Branch Zone Office: See Counterstatement of the Case, *supra.*)

Applying considerations discussed by this Court in *Norton, supra,* it is clear that General Motors is *not* regarded by the trade as "remote and unaccessible." General Motors can be reached "with process of local courts for breach of contract, or for services if the goods are defective or in need of replacement." *Norton v. Department of Revenue, supra,* p. 539.

And so unless we are to reduce application of the due process clause to a matter of "tags," i.e., "office" or "no office," it is clear that application of the tax here is even more justifiable in this case than in *Norton* and *Field* as to all of General Motors' in-state activities here. However, if we must resolve the due process question put by General Motors by "tags," then it is certain that the existence of the Chevrolet Branch Office which expedited deliveries in the Chevrolet Class A transactions meets any such criterion.

CONCLUSION

> "As has been so often stated but nevertheless seems to require constant repetition, not all burdens upon commerce, but only undue or discriminatory ones, are forbidden." *Nippert v. City of Richmond*, 327 U. S. 416, 425.

The tax involved herein is in no way discriminatory against interstate commerce. No other state can levy a tax upon General Motors' selling activities measured by the same gross receipts which Washington uses to measure the tax here in question. *Freeman v. Hewit*, 329 U. S. 249. Therefore, there can be no question of multiple burdens upon or discrimination against the selling operations of General Motors simply because gross proceeds of sale are used to measure the tax.

Nor is there any discrimination against General Motors simply because the State of Washington fails to levy a manufacturing tax upon in-state manufacturers when such manufacturers must also pay a Washington tax on their selling activities. The fact that General Motors may be exposed to a tax by other states upon its manufacturing operations in those other states, while a Washington manufacturer is not so taxed, does not constitute unconstitutional discrimination. For what the commerce clause demands is that similar operations and similar property be treated equally by the taxing state, even if the operations cut across state lines or the property comes from outside the state. *Halliburton Oil Well*

Cementing Co. v. Reily, 373 U. S. 64 (1963). It does not demand that one state must, in effect, guarantee that both in-state and out-of-state tax burdens upon completely distinct activities or operations cannot, in total, exceed the total in-state tax burdens on a strictly intrastate business.

Nor should the tax be invalidated on the basis of the dual mischaracterization of it made by General Motors. It is not a tax on sales or transactions that take place outside the state, for the reason that it simply is not a tax upon sales or transactions at all. Neither is it a tax on the privilege of engaging in exclusively interstate business. Rather, it is a tax upon business activities taking place solely within the state, measured only by gross receipts from sales or transactions attributable to these activities. *Field Enterprises, Inc., v. State*, 47 Wn. (2d) 852, 289 P. (2d) 1010, affirmed per curiam, 352 U. S. 806.

Finally, the tax should not be invalidated as an undue burden upon interstate commerce or as a deprivation of property without due process of law simply because part of the sales or transactions used to measure the tax were not channeled through a local office. For General Motors, through its activities in Washington, has just as completely localized itself with respect to such transactions, and has just as permanently established itself in the State, as it would have through a local office. The inquiry should be directed to the nature and extent of the in-state activities which produce the sales used to

measure the tax, not whether or not these activities are somehow connected with a local office.

Accordingly, the Judgment of the Supreme Court of the State of Washington should be affirmed.

Respectfully submitted,

JOHN J. O'CONNELL,
Attorney General for the State of Washington,
Temple of Justice, Olympia, Wash.

JOHN W. RILEY,
Special Assistant Attorney General,
320 Central Bldg., Seattle, Wash.

JAMES A. FURBER,

TIMOTHY R. MALONE and

LLOYD W. PETERSON,
Assistant Attorneys General,
Administration Bldg., Olympia, Wash.

Attorneys for Appellees.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 17 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF FOR APPELLANT

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit, Michigan, 48202;
DEWITT WILLIAMS,
1440 Washington Building,
Seattle, Washington, 98101,
Attorneys for Appellant.

WILLIAMS, LANZA, KASTNER & GIBBS,
Seattle, Washington,
Of Counsel.

Interstate Brief & Record Co., 356 Congress St. E., Detroit 26, Michigan

SUBJECT INDEX

	Page
Differences Between Parties	1
Counterstatement of Case	2-6
Nature of the Tax	6-23
First Question—Interstate Commerce	11-17
Second Question—Interstate Commerce	17-19
Third Question—Due Process	19-23
Conclusion	24

INDEX TO AUTHORITIES CITED

Cases:

Baldwin v. G. A. F. Seelig, Inc., 294 U.S. 511	18
Dean Milk Co. v. Madison, 340 U.S. 349	19
Freeman v. Hewit, 329 U.S. 249	10, 15, 16
Field Enterprises, Inc. v. State of Washington, 47 Wn.2d 852, 289 P.2d 1010, 352 U.S. 806	11, 12, 13, 14
General Trading Co. v. State Tax Commission, 322 U.S. 335	23
B. F. Goodrich Co. v. State, 38 Wn.2d 663, 231 P.2d 325 cert. den. 342 U.S. 876	10, 11-12
Gwin, White & Prince, Inc., Henneford, 305 U.S. 434	13, 14, 15
Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64	17, 18, 19
Hans Rees' Sons, Inc. v. North Carolina, 283 U.S. 123	20
Miller Brothers Co. v. Maryland, 347 U.S. 340	23
Nippert v. City of Richmond, 327 U.S. 416	6, 9, 10, 14, 18
Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450	8, 15

Page

Norton Company v. Department of Revenue, 340 U.S. 534 ..... 10, 11, 12, 13, 14, 15, 17
Railway Express Agency, Inc. v. Virginia, 347 U.S. 359 22
Railway Express Agency, Inc. v. Virginia, 358 U.S. 434 22
Scripto, Inc. v. Carson, 362 U.S. 207 23
Spector Motor Service Inc. v. O'Connor, 340 U.S. 602 ..... 8, 10, 15
West Publishing Company v. McColgan, 328 U.S. 823 17

Statutes:

Revised Code of Washington, Title 82:
RCW 82.04.220 ..... 6, 7
RCW 82.04.240 7
RCW 82.04.270 ..... 7, 20
73 Stat. 555; 15 U.S.C. §381-384 (P.L. 86-272) 23

Other Authorities:

Hartman, "State Taxation of Interstate Commerce" pp. 61, et seq. 8

IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 115

GENERAL MOTORS CORPORATION,
Appellant,
v.
STATE OF WASHINGTON, ET AL.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF FOR APPELLANT

DIFFERENCES BETWEEN PARTIES

Brief of Appellees[1] reveals numerous differences between the parties, most of which are minor. In addition to the ultimate conclusion, the two major differences, or groups of differences, appear to be: the proper analysis of and emphasis upon facts; and the nature of the tax and its analogy to the taxes involved in prior decisions of this Court. We will deal with these two major issues with only passing reference to some of the minor points.

[1] For convenience, we adopt Appellees' device of citing Brief of Appellant as "GM Br." and will cite Brief of Appellees as "State Br."

COUNTERSTATEMENT OF CASE

Appellees puzzle us with their statement (State Br. 12) that "certain portions of the [Appellant's] statement [of the case] are misleading, if not actually inaccurate." What follows is a counterstatement which fails to specify any instance wherein General Motors' statement is "misleading" or "inaccurate". At most, it sets forth in detail additional facts which Appellees deem significant but which General Motors considers immaterial to the questions presented, and which may themselves be misleading unless great care is taken to sort out what General Motors is doing in Washington from what it is doing elsewhere and what others are doing.

It should be noted, for instance, that most of the activity involved in the "organization, development and maintenance of the General Motors retail dealer organization within the State of Washington" (State Br. 12) takes place outside that state. The zone managers who, with much help and supervision from offices in California and Michigan, are charged with this responsibility at the zone level are officed in Portland, Oregon, where they perform most of their personal functions and direct the activities of the personnel in and working out of the zone office (R. 14-18). The divisional Dealer Organization and Analysis Department, located in Michigan, does the staff work involved in selecting and locating dealerships (R. 176). The Chevrolet department head from Detroit testified:

> "• • • We, in our departmental activity are constantly reviewing the entire United States, in conjunction with our regional and zone managements, with respect to determining where Chevrolet dealers should be located. At the same time we work with our

> regional and zone management on behalf of our central office sales management, in reviewing all applications for the Chevrolet selling agreement, and whenever a Chevrolet applicant is recommended by zone management for a Chevrolet dealership, it is cleared through our departmental activity, on behalf of our central office sales management, before any agreements are executed with the applicant." (R. 176)

The dealer selling agreements with Washington dealers are executed outside the state (R. 48). The activities of the zone personnel recited at pages 15 through 20 of the State's Brief are in part performed outside the state and, inside or out, all relate directly to the fulfillment of such agreements, and as such are part of the interstate movement of goods to the Washington dealers. They were fairly summarized in our Statement as follows (GM Br. 8):

> "* * * Thereafter, the zone manager and his assistants advise the dealer in the management of his dealership and check his compliance with the Dealer Selling Agreement, particularly through the efforts of a 'district manager'."

This case involves only the activities and transactions of the Chevrolet, Oldsmobile, Pontiac and General Motors Parts Divisions. Those of Appellant's other divisions and subsidiaries are not at issue as Appellees imply (State Br. 21-22), and are wholly irrelevant. The trial court made the following finding of fact:

> "Plaintiff's Chevrolet, Pontiac, Oldsmobile and General Motors Parts Divisions operated substantially independently of each other and of other divisions and subsidiaries. The transactions of each division are in no way related to the transactions of any other division, and the transactions of the Port-

land warehouse of the General Motors Parts Division were in no way related to the transactions of the Seattle warehouse of that division." (R. 56)

The heading "In-State Aspects of the Actual Sale" (State Br. 22) could lead to a misunderstanding of the recital which follows. The parties stipulated that the ordering process was as follows:

"• • • Once a month he [the district manager] obtains from the dealer a projection of the dealer's requirements for automobiles for the next three months. He assists the dealer in making these estimates.

"Actual orders are thereafter sent by the dealer to the Zone Office, usually by mail, sometimes by telephone, and infrequently handed to the District Manager, who then mails or delivers them to the Zone Office.

"The orders are accepted (or rejected) at the Zone Office or at the factory, and if accepted are filled by shipment from the factory by common carrier, f.o.b. the factory. If the dealer has so arranged in advance with a finance company, shipments are made on straight bill of lading upon receipt of payment or acceptable credit from the finance company, which takes security title. Other shipments are made on bill of lading with sight draft attached." (R. 17-18)

The trial court made the following findings of fact:

"• • • Sales are made by plaintiff of automobiles and trucks and parts to dealers in this state pursuant to orders therefor by said dealers. Said automobiles and trucks and parts are manufactured outside of the State of Washington and shipped into this state. Activities conducted primarily outside the state include the • • • delivery of products, • • • the receipt, processing, recording, approving, accepting

and filling of orders, the billing and receipt of payment, the investigation, approval and execution of customer contracts (dealer franchises), the investigation and extension of credit, * * *" (R. 47-48)

* * * * *

"From the time of receipt and acceptance of an order to consummation by delivery of product and receipt of payment, every step on plaintiff's part in each of the types of transactions in dispute is performed at an office, warehouse or factory in some other state except such expediting of deliveries as herein found to have been done by the Seattle Branch Office with respect to Chevrolet Class A transactions. By reason of the nature of plaintiff's business, solicitation of orders is not a necessary or usual step in its sales procedures.'" (R. 54)

Appellees claim that "'securing orders' is the function of the local district manager," citing as sole support a general description of a district manager's duties as stated in a Pontiac job classification manual (State Br. 23). From the foregoing facts, as stipulated by the parties and found by the trial court, based upon testimony of district managers themselves as well as of their superiors, it is clear that the actual practice is otherwise and a district manager does not "secure orders" in any sense other than promoting the conditions which encourage orders. The trial court found with respect to the district managers: "They do not accept or fill orders or approve credit, receive payment or make delivery" (R. 55). The general description of the job classification manual must give way to actual facts found and stipulated.

We have inserted these remarks merely to emphasize that what is going on in the state is not intrastate business, nor so complicated and extensive interstate activities as to look like intrastate business, but a limited activity

of exclusively interstate character. We don't suppose that, for instance, it would make any difference if the district managers actually did "secure orders". *Nippert v. City of Richmond*, 327 U.S. 416.

NATURE OF THE TAX

Throughout its brief (State Br. 8, 27, 31, 35, 63, 69), the State accuses us of "mischaracterizing" the nature of the tax. We are frankly surprised that, after the years of argument in this case, there should appear to be any difference between us on this point; and we confess we are unable to follow the State's argument.

Our technical statement of the nature of the tax is contained in the "Questions Presented". The State does not quote these, but quotes fragments from our "Summary" and "Argument". We called it a:

> "• • • tax on the privilege of engaging in the business of making sales at wholesale within said state, and which is measured by unapportioned gross receipts • • •" (GM Br. 2, 4); and a
>
> "• • • tax measured by unapportioned gross receipts which is laid on both the privilege of manufacturing and the privilege of selling • • •" (GM Br. 3)

We thought that quite accurately paraphased the statute (GM Br. 2a):

> "82.04.220 *Business and occupation tax imposed.* • • • there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales • • •

"82.04.240 *Tax on manufacturers.* • • • Upon every person engaging within this state in business as a manufacturer • • •

"82.04.270 *Tax on wholesalers.* • • • Upon every person • • • engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate • • •"

The Supreme Court of Washington said in its opinion herein (R. 447):

"• • • The business and occupations tax statute, RCW 82.04.220, imposes a tax on the privilege of engaging in business activities."

and (R. 453):

"The tax is imposed upon business activity within the state. The measure of the tax is the proceeds from sales attributable to that activity. No part of the tax is attributed to manufacturing or other activities taking place outside of the state."

The State seemingly urges a distinction between "a tax on the privilege of engaging in business activities", as in the first quotation above from the state court's opinion, and a "tax • • • imposed upon business activity", as in the second quotation, and quotes the second but not the first (State Br. 31-37). We cannot find such a distinction, except, perhaps, in semantics beyond our reach, and it is quite apparent from the juxtaposition of the two quotations that the state court did not find it either.

As we pointed out in our Brief (GM Br. 17-18), there are distinctions among types of taxes from which real differences flow and which must be kept in mind in examining this Court's precedents in state tax questions. These

distinctions are within each of the following numbered groups:

1. (a) net income taxes; (b) sales and use taxes; (c) franchise taxes measured by unapportioned gross receipts.
2. (a) apportioned net income taxes; (b) franchise taxes measured by apportioned net income.
3. (a) sales taxes; (b) use taxes.
4. (a) apportioned gross receipts taxes; (b) unapportioned gross receipts taxes.

The distinctions within the first group we think are of primary importance in this case, the others only secondary. We think that Washington's tax comes within the class of "franchise[2] taxes measured by unapportioned gross receipts", to be separated carefully from net income taxes and sales and use taxes. We are sure it is not a net income tax, we agree with the State that it is not a sales tax (State Br. 33, 39, 63), and we think our arguments have been consistent with both those distinctions. The State, however, seeks support in an economic argument applicable only to taxes the burden of which is borne by the purchaser (i.e., sales and use taxes) in urging (State Br. 42, 43) that the "state of the market" should be allowed to tax interstate transactions "to equalize competitive conditions".

---

[2] We do not understand that the State finds any difference between "franchise" and "privilege" and we use the terms interchangeably as we believe is generally done (e.g., Hartman, "State Taxation of Interstate Commerce", pp. 61, *et seq.*), except in certain unusual situations in which "franchises" are treated as a species of property. In *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, at 458, this Court cited *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602, for the proposition that: "Moreover, it is beyond dispute that a State may not lay a tax on the 'privilege' of engaging in interstate commerce."

The State quarrels (State Br. 31, 35, *et seq.*) with our conclusion (GM Br. 38) that:

> "Under these circumstances the effect of the decision below is to sustain an unapportioned gross receipts tax imposed directly and solely on the privilege of engaging in exclusively interstate commerce or on extrastate commerce having minimal in-state aspects • • •"

The "circumstances" alluded to are briefly stated (GM Br. 37, 38) immediately preceding that conclusion, and are essentially that the activities within the state are solely in furtherance of out-of-state manufacture and sale of products followed by interstate shipment.

We can think of no conceivable way in which the in-state activities can be anything other than an integral part of the interstate (or extrastate) commerce itself. Neither the court in its opinion nor the State in its brief points to a single element which has any intrastate flavor.

The quotation from the court's opinion, upon which the State now relies (State Br. 37), points up an important gap in their thinking (R. 447-48):

> "• • • These activities provide an incident upon which the taxing statute operates."

Nowhere is any attempt made to reconcile that statement with the constitutional principle carefully enunciated by this Court in *Nippert v. City of Richmond*, 327 U.S. 416, and quoted in our Brief at p. 43: states cannot lay taxes on "incidents" which are integral parts of interstate commerce.

If "these activities" are an integral part of the interstate commerce (as we have all along asserted and as the state supreme court apparently assumes (R. 451)), and if the tax

is for "the privilege of engaging in" them (as the state supreme court said it is), or "upon" the activities themselves (as the State now argues), it is most assuredly "imposed directly and solely on the privilege of engaging in exclusively interstate commerce", as we said, or directly upon the interstate commerce itself—and it matters not which. No one doubts that mathematically the tax is a function of unapportioned gross receipts. A tax on unapportioned gross receipts from interstate commerce, or a tax for the privilege of engaging in interstate commerce or "on" activities integral with interstate commerce, and measured by unapportioned gross receipts therefrom, however described, is invalid, *Freeman v. Hewit*, 329 U.S. 249, *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602 and *Nippert v. City of Richmond*, 327 U.S. 416.

The State's argument (State Br. 35-37) that the differences in result between *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602, on the one hand, and *Norton Company v. Department of Revenue*, 340 U.S. 534, and *B. F. Goodrich Co. v. State*, 38 Wn.2d 663, 231 P.2d 325, cert. den. 342 U.S. 876, on the other, were rooted in differences in the types of taxes involved is poorly contrived. In each case the tax was for the privilege of engaging in business and measured by gross receipts. The differences were factual, not conceptual; and the primary difference was that both Norton and Goodrich were carrying on intrastate business within the taxing state whereas Spector was not. *Norton* and *Goodrich* are both fully in accord with *Spector* in holding that a privilege tax may not be measured by proceeds of transactions having no connection with an intrastate operation.

First Question—Interstate Commerce

The State relies heavily on *Field Enterprises, Inc. v. State of Washington*, 47 Wn.2d 852, 289 P.2d 1010, affd. per curiam 352 U.S. 806, citing it no less than nineteen times. The case is inapposite. The *Field Enterprises'* transactions all were processed through a substantial office in the state, which this Court evidently concluded was doing intrastate business. *Field Enterprises* has no bearing on the taxability of the items here disputed.

The State accuses us (State Br. 43) of wanting the Court to overrule *Norton Company v. Department of Revenue*, 340 U.S. 534. Nothing could be further from our minds, and, indeed, we have relied more heavily on that case than any other. The State apparently doesn't keep in mind what *Norton* decided and what it didn't. What it did decide was that incoming interstate sales, which had no contact with a local intrastate store other than the advisory services of engineers working out of that store, could not be subjected to a gross receipts tax. It did not decide that anything was taxable, but as to other classes of transactions, which utilized the facilities of the local store, it held that the interstate was so intermingled with the intrastate that it was "permissible judgment" for the Illinois court to apply the tax to the whole.

General Motors pays without dispute taxes on all transactions which can be assimilated to any of the transactions in *Norton* as to which this Court did not disturb the Illinois court's judgment (transactions utilizing facilities of related intrastate store). We think that the Washington court, far from trying to follow *Norton* as asserted by the State (State Br. 41), was trying in every way to avoid it. This was presaged by that court's stiff bow to *Norton* in its opinion in *B. F. Goodrich Co. v. State of Washington*, 38

Wn.2d 663, 231 P.2d 321) discussed in our Brief (GM Br. 21-22, 52-54).

It is not easy to analyze this Court's decision in *Field Enterprises*, since it was a *per curiam* affirmance without opinion except the citation of *Norton*. However, since this Court in *Norton* declined to interfere with the Illinois court's conclusion that transactions passing through an admittedly taxable local store could be included in the measure of tax on that store's intrastate business, it appears that the extensive office which Field Enterprises maintained in Washington must have been viewed as an intrastate business. If that be correct, the decision obviously has no relevance to the present case.

The concept that a tax *paid by the consumer* should be paid to the consumer's state is economically sound for reasons suggested by Mr. Justice Rutledge and quoted or mentioned by both parties hereto (GM Br. 23; State Br. 42). But the State overlooks the fact that the quotations referred *only* to taxes paid by the consumer (sales and use taxes, including the Indiana Gross Income Tax which is specifically passed on and in this respect is a sales tax). Application of the argument to *our* situation carries it own refutation. "Equalizing competitive conditions" (State Br. 42-43) is achieved by giving the tax to the consumer's state only if the consumer pays it. If, as in this case, the tax, incurred because of customers in Washington, is not paid by those customers but is passed on as part of overhead to customers generally, Michigan and California customers are required to pay some of Washington's tax, although there is no activity in that state which contributes to their purchase.

The example suggested by the State serves well to point up another distinction—still based on who pays the tax—

which the State misses. At State Br. 39, it is said that the property taxes which General Motors pays with respect to its factories in Michigan and California are passed on to customers generally. That is true, and rightly so because the customer in, for example, Washington is paying that part of the cost of production of his automobile which represents governmental services to the factories which produced it. There is no analogy which justifies charging a Michigan customer for a tax paid to Washington on receipts from Washington customers when the Washington activities, and hence governmental services, contribute nothing whatsoever to the Michigan automobile.

The State asserts (State Br. 33) that the "proceeds from transactions" are used to measure the tax "only when they are derived from in-state buyers and are attributable to the in-state activity being taxed". The market state concept creeps in in the reference to "in-state buyers". What have they to do with it, since the tax is supposed to be on *activities*, not customers? In only an extremely loose and tenuous sense are these receipts "attributable" to in-state activity—only in the sense that they are attributable to a great mass of activities (and merchandise), including a relatively infinitesimal activity in Washington. They are far less "attributable" to that in-state activity than they are to the sales activities taking place in Oregon, California and Michigan, to the manufacturing activities in various states other than Washington, and to many other activities, all outside Washington.

Appellees argue (State Br. 44-46) that *Norton Company v. Department of Revenue*, 340 U.S. 534, and *Field Enterprises, Inc. v. State of Washington*, 352 U.S. 806, overrule *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, if not in result, at least in their rationale that no state may lay a direct unapportioned tax on gross receipts derived

from interstate commerce—and presumably overrule also the other cases cited in our argument (GM Br. 39-40). But *Norton*, and presumably also *Field Enterprises*, since the only stated reason for its affirmance was *Norton*, involved taxes imposed upon *intrastate* business, and hence do not disturb the holdings in *Gwin, White & Prince* and the other cases (pp. 11-12, *supra*). The business which Washington is here trying to tax is, like *Gwin, White & Prince*, like *Nippert v. City of Richmond*, 327 U.S. 416 (applying the same rule to states of destination) and like several others referred to in our Brief, *exclusively interstate*.

Appellees State quite correctly say (State Br. 47-49) that there would be no "multiple burden" in allowing the state of destination to tax gross receipts of interstate sales if the state of origin (and, necessarily, intervening states) were foreclosed from imposing any tax, apportioned or otherwise. The argument assumes, however, that this Court is willing to abandon the long-established constitutional doctrines that no state may either tax the privilege of engaging in interstate commerce nor directly tax the unapportioned gross receipts of such commerce (GM Br. 34-42; pp. 6-10, *supra*); and futher that this Court will now find invalid the many apportioned franchise taxes now levied by states of origin, including those paid by General Motors measured by computed portions of the income of its entire business, including that derived from its sales to Washington customers.

The State says (State Br. 47) it "disagrees completely" with the idea that no state—of origin or destination, or in between—should be allowed to tax the privilege of engaging in interstate commerce and measuring the tax by the proceeds thereof. In doing so it disagrees not only with us but with this Court, which for very sound reasons has consistently held that, absent permission from Congress, *no*

state may impose this type of tax on exclusively interstate commerce. Although the state of origin was involved in both *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, and *Freeman v. Hewit*, 329 U.S. 249, the careful reasoning in each does not depend upon that fact but applies with equal force to the state of destination. Thus, in *Gwin, White & Prince*, Mr. Justice Stone said, at p. 441:

> "For more than a century • • • it has been recognized that under the commerce clause, Congress not acting, some protection is afforded to interstate commerce against state taxation of the privilege of engaging in it. [Citations omitted.] For half a century • • • it has not been doubted that state taxation of local participation in interstate commerce, measured by the entire volume of the commerce, is likewise foreclosed."

Freeman v. Hewit is to the same effect, and the rule was noticed with strong approval in the latest case to consider related matters, *Northwestern States Portland Cement Co. v. Minnesota—Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, in which the holding of *Spector Motor Service Inc. v. O'Connor*, 340 U.S. 602, was expressly reaffirmed. The interstate commerce in *Spector* went both into and out of the taxing state—Connecticut was both the state of origin as to some transactions and the state of destination as to others.

This of course does not mean that interstate commerce does not pay its way. It does pay, in many ways, mentioned in our Brief (GM Br. 33). This Court has so recognized in both *Gwin, White & Prince* and in *Freeman v. Hewit*. It did not say that interstate commerce would be paying its way because it could be taxed by the state of destination. Instead it said the states could use other types of taxes: in *Gwin, White & Prince*, 305 U.S. 434, at p. 441:

> "• • • There has been left to the states wide scope for taxation of those engaged in interstate commerce, extending to the instruments of that commerce, to net income derived from it, and to other forms of taxation not destructive of it."

The same point was made by Mr. Justice Frankfurter in *Freeman v. Hewit*, 329 U.S. 249, at p. 253:

> "• • • To deny a State a particular source of income because it taxes the very process of interstate commerce does not impose a crippling limitation on a State's ability to carry on its local function."

and at p. 255:

> "• • • Thus, it can tax local manufacture even if the products are destined for other States • • • It can impose license taxes on domestic and foreign corporations who would do business in the state • • •, though it cannot, even under the guise of such excises, 'hamper' interstate commerce • • • It can tax the privilege of residence in the State and measure the privilege by net income, including that derived from interstate commerce."

The State seemingly disagrees with our statement that General Motors engaged in no intrastate commerce and no realistically separable local business (State Br. 51-52), but does not point to a single act that is not part of the exclusively interstate business. The sales promotion work, since it is exclusively in furtherance of interstate (or extrastate) sales, is pure interstate commerce. We don't know what bearing the "extreme degree of control" that General Motors is said to have over its dealers has on the question, but if there is any such, and if it has any bearing, it should be kept in mind that most of the activity so characterized occurs outside Washington.

The State misuses *West Publishing Company v. McColgan*, 328 U.S. 823 (State Br. 53). The Justices were not in agreement as to whether the use of office space was a controlling factor, but it was a case of a tax on *apportioned net income*, and no authority at all to the contrary of the *Norton* rule (enunciated five years later) that *unapportioned gross receipts* cannot be taxed unless related to a local store carrying on an intrastate business.

Second Question—Interstate Commerce

The State erroneously argues (State Br. 57-58) that our argument on this point would invalidate the Washington tax on wholesaling even if there were no Washington tax on manufacturing. It would not. To withstand a charge of discriminating against interstate commerce, a state's tax must (though this alone will not save it) be such that if enacted by every state it would not (at least not significantly) bear more heavily upon interstate commerce than intrastate. Measured by that standard, Illinois' retail occupation tax is sound: goods manufactured in Iowa and sold in Illinois would pay one tax to Illinois, and vice versa; and so would goods both manufactured and sold in either state. But if every state were to adopt Washington's tax, goods manufactured and sold in Washington (or in any other state) would pay only one tax, while goods manufactured in Washington and sold in any other state, or vice versa, would pay two taxes. Quite a difference.

We recognize the difference between the situation here and that in *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, and do not rely on that case for the purpose

suggested at State Br. 59, but merely for its guidance in finding the proper comparison to use in testing for discriminatory double taxation. *Halliburton* teaches that the total activities of the out-of-state manufacturer-user (manufacturing out of state, using in-state) must be compared with the total activities of an in-state manufacturer-user (manufacturing in-state, using in-state), and not just with an in-state user (purchasing and using in-state). Here, the State may not, as the Washington supreme court did (R. 451-53), compare only the selling activities of the two manufacturers, but must instead compare the sum of manufacturing-wholesaling activities within and without the state with the sum of such activities within the state, since the structure of the statute establishes a relationship between manufacturing and wholesaling.

Further, *Halliburton* does demonstrate that if a state's taxing scheme (such as Washington's) encourages an out-of-state manufacturer to become a resident manufacturer in order to compete on equal terms, then the tax structure is discriminatory against interstate commerce in the constitutional sense. The Court reasoned, 373 U.S. 64, 72:

> "• • • • If Louisiana were the only State to impose an additional tax burden for such out-of-state operations, the disparate treatment would be an incentive to locate within Louisiana; it would tend 'to neutralize advantages belonging to the place of origin.' *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511, 527, 79 L.ed. 1032, 1040, 55 S.Ct. 497, 101 A.L.R. 55. Disapproval of such a result is implicit in all cases dealing with tax discrimination since a tax which 'discriminates in favor of the local merchant,' *Nippert v. Richmond*, 327 U.S. 416, 90 L.ed. 760, 66 S.Ct. 586, *supra*, also encourages an out-of-state operator to become a resident in order to compete on equal terms. If similar unequal tax structures were

> adopted in other States, a not unlikely result of affirming here, the effects would be more widespread. The economic advantages of a single assembly plant for the appellant's multistate activities would be decreased for units sent to every State other than the State of residence. At best, this would encourage the appellant to locate his assembly operations in the State of largest use for the units. At worst, it would encourage their actual fractionalization or discontinuance. Clearly, approval of the Louisiana use tax in this case would 'invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause.' *Dean Milk Co. v. Madison*, 340 U.S. 349, 356, 95 L.ed. 329, 334, 71 S.Ct. 295."

The Washington tax structure, excusing as it does the application of the manufacturing tax where an item of commerce is both manufactured and sold there, must fall under the precise reasoning stated above in *Halliburton*.

Third Question—Due Process

The State meets neither of our points on due process. The first is that the tax is laid upon the business of making wholesale sales, and when such sales are made entirely without the state, we find the state reaching beyond its territorial jurisdiction to tax them, notwithstanding the presence of minor in-state activities related to such sales which the Washington court says are incidents supporting the tax (GM Br. 61-63, 66-68).

The second is that a tax, valid in other respects, is invalid if its measure is grossly disproportionate to its subject (GM Br. 63-66). The Washington supreme court, apparently recognizing that it cannot tax the extra-state sales

themselves, lays the tax on the related in-state "incidents", and finds nothing wrong with measuring that tax by the proceeds of the sales themselves—a measure which, since it is the same as if the entire business, not only of selling but also manufacturing, were strictly local, is necessarily grossly disproportionate to the actual in-state activities. Due process can just as well be violated by an excessive measure as by an extraterritorial application. *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123 (GM Br. 63-64, 69).

The State, however, complains (State Br. 31) about the assertion in the Summary portion of our brief (GM Br. 16) that because this tax is by its terms laid on the privilege or activity of wholesale selling, and all the taxed sales were made without the state, due process was violated by taxing privileges granted by or activities conducted in other states.

Before the state courts we argued, and the *trial* court found (R. 61), that the statute did not purport to tax such activities as General Motors conducted within the state, and that General Motors' activities of the type which the statute did undertake to tax were not within the state. Our argument was that no claim was made that the statute imposed any tax on General Motors except in the wholesaling category: "engaging within this state in the business of making sales at wholesale" (RCW 82.04.270, GM Br. 2a); and that since all sales were made without the state, the statute had no application.

The State Supreme Court quickly disposed of that (R. 447-48):

> "* * * General Motors accomplishes wholesale sales of its products to retail dealers within this state.[3] Part

[3] We feel sure the court meant the phrase "within this state" to modify "dealers" and not "accomplishes".

> of the activities involved in these wholesale sales take place elsewhere; e.g., orders are filled, delivery made, and payment is received outside the state.[4] Nonetheless, business activities having a relation to wholesale sales are conducted in Washington. These activities provide an incident upon which the taxing statute operates. Whether or not these activities are sufficiently related to the accomplishment of wholesale sales to base the tax on the gross receipts of all wholesale sales to Washington retail dealers is a question with constitutional law ramifications in relation to the *measurement* of the tax and not the *imposition* of the tax. On the facts indicated, we hold that there is a statutory basis for imposing the tax." (Emphasis in original.)

The state supreme court thus reads "engaging within this state in the business of making sales at wholesale" to include "engaging within this state in business activities having a relation to wholesale sales made elsewhere". If that construction seems strained, it is nevertheless controlling as to the meaning of the statute. Even if the state court were successful in this attempt to satisfy due process by pinning the tax, not on the extraterritorial activity of selling, but on the related activities within the jurisdiction, it could do so only at the expense of ruining the argument, strongly urged by the State (State Br. 47-49), that there is no danger of multiple burdens in a tax on wholesaling, because only one state can tax that activity, even though some other state might tax manufacturing and use the same gross receipts as a measure. If Washington, having a mere relation to the wholesale sales, can impose such a tax so can

---

[4] The court might have elaborated this to include the entire fact as found by the trial court (R. 54):

"XX. From the time of receipt and acceptance of an order to consummation by delivery of product and receipt of payment, every step on plaintiff's part in each of the types of transactions in dispute is performed at an office, warehouse or factory in some other state except such expediting of deliveries as herein found to have been done by the Seattle Branch Office with respect to Chevrolet Class A transactions. By reason of the nature of plaintiff's business, solicitation of orders is not a necessary or usual step in its sales procedures."

any other state, and if every state in which there is some activity having a relation to the wholesale sales can tax the gross proceeds thereof, it is difficult to see any escape from multiple burdens except to confine all activity to a single state.

Furthermore, we believe that the attempted avoidance of extraterritoriality is unsuccessful. It is too close to the attempt of the Virginia court in *Railway Express Agency, Inc. v. Virginia*, 347 U.S. 359, to escape the prohibition against state taxes on the privilege of engaging in interstate commerce by characterizing that state's license tax as a property tax.[5] The measure of the tax (gross receipts) was its undoing. The tax, urged as taxing the intangible going concern value of physical properties within the state, amounted to half the physical value of such properties, and indicated a base of a hundred times that physical value. Of this, this Court said (p. 366):

> "This may not overtax the express company, but it does overtax our credulity * * *"

It is equally incredible that a tax assertedly imposed upon minimal in-state activities related to wholesale sales made elsewhere, and measured by the entire proceeds of those sales, is not in principal part levied on the wholesale selling itself, as the statute says.

The extreme to which the Washington court strains in trying to find something taxable here—in support of its implied thesis that tax should be paid because of the presence of customers—is illustrated by the significance which

---

[5] Virginia, by amending its statute so as to impose an intangible property tax measured by *apportioned* gross receipts, expressly in lieu of other property taxes, later met constitutional requirements. *Railway Express Agency, Inc. v. Virginia*, 358 U.S. 434.

it attaches to advertising. It recognizes that advertising activity is all carried on elsewhere, but wants General Motors to pay a tax because the media (magazines, newspapers, television) operate in Washington and are seen by Washington customers. (R. 440, 450) This stretches state jurisdiction far beyond the permissible limits specified in *Miller Brothers Co. v. Maryland*, 347 U.S. 340, in which not only customers plus advertising, but actual delivery in the vendor's own trucks, were held insufficient to supply the "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax" which "due process requires" even to permit the state to impose responsibility for collecting, for a fee, a *use* tax imposed upon its customers. Responsibility for collection rests upon much thinner jurisdiction than that required to support liability for a franchise tax not chargeable to the customer. *General Trading Co. v. State Tax Commission*, 322 U.S. 335; *Scripto, Inc. v. Carson*, 362 U.S. 207.

Under P.L. 86-272 (73 Stat. 555, 15 U.S.C. §381-4) (GM Br. 7a-9a) enacted by Congress in 1959, no state may impose a tax on or measured by *apportioned net income* on account of such activities as those of General Motors in this case, absent a local office, etc. *A fortiori*, the principle and policy of that Act frown upon a tax measured by unapportioned gross receipts. The Act has, of course, no direct application, because it did not take effect until long after the close of the period here in litigation, and because it does not in terms mention this type of tax. Nevertheless, it is strongly persuasive as an indication of what Congress thinks the rule should be in these circumstances.

CONCLUSION

The State has raised no points requiring qualification of the conclusion stated in our main brief (GM Br. 68-70).

Respectfully submitted,

ALOYSIUS F. POWER,
DONALD K. BARNES,
THOMAS J. HUGHES,
3044 West Grand Boulevard,
Detroit, Michigan, 48202;

DEWITT WILLIAMS,
1440 Washington Building,
Seattle, Washington, 98101,
Attorneys for Appellant.

WILLIAMS, LANZA, KASTNER & GIBBS,
Seattle, Washington,
Of Counsel.